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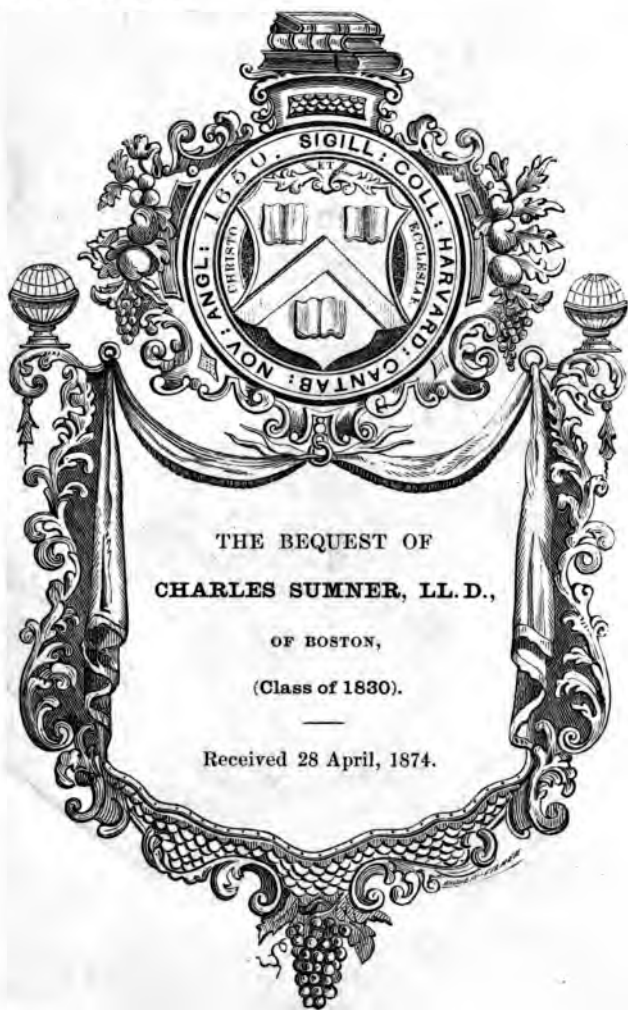
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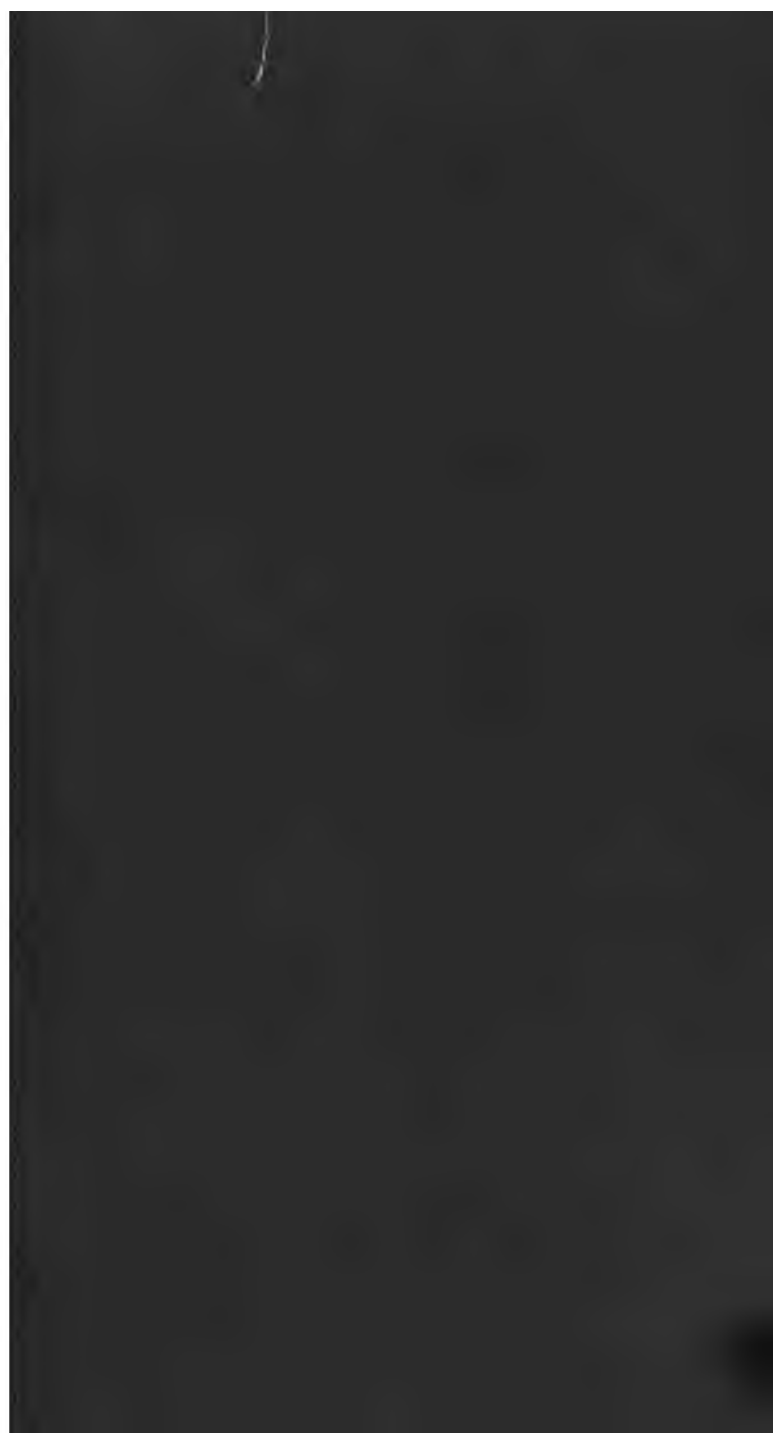
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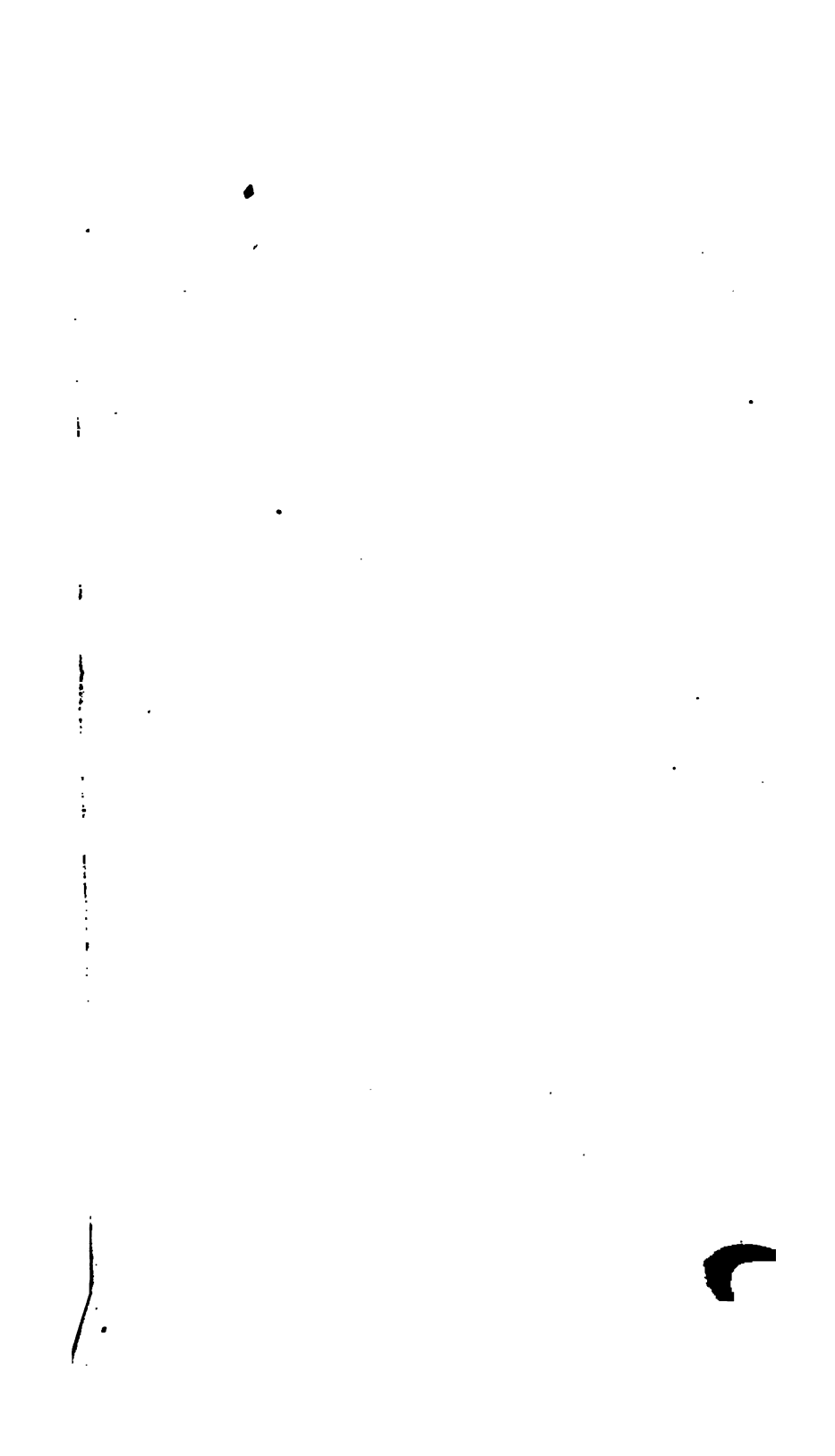
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THE  
ARTICLES OF CONFEDERATION  
vs.  
THE CONSTITUTION.

THE PROGRESS OF NATIONALITY AMONG THE PEOPLE AND  
IN THE GOVERNMENT.

BY  
L. BRADFORD PRINCE, LL.B.



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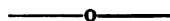
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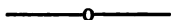
# CONTENTS.



	PAGE
<i>I.—The Articles of Confederation, and the Weakness of the Government under them, . . .</i>	11
<i>II.—The Constitution, and the Strength of the Government under it, . . .</i>	44
<i>III.—The Causes of this Difference in comparative Strength. New Elements of Power and Stability introduced in the Constitution, . . .</i>	72
1.— <i>The Government of Three Branches, Executive, Legislative, and Judicial, . . .</i>	72
2.— <i>The Uni-Executive, . . .</i>	79
3.— <i>The Bi-cameral Legislative System, . . .</i>	86
4.— <i>The increased NATIONALITY of the Government, . . .</i>	94
<i>A.—In General Provisions, . . .</i>	94
<i>B.—In the Character of the Executive, . . .</i>	106
<i>C.—In the Character of the Senate, . . .</i>	111
<i>D.—In the Character of the House of Representatives, . . .</i>	115
5.— <i>The Power of the National Government to reach INDIVIDUALS, and to enforce its Laws, . . .</i>	118



## P R E F A C E .



THIS paper was originally prepared with no intention of publication ; being written for the Department of Political Science at Columbia Law School (where it received the \$200 prize), in 1866, when the subject prescribed for the competing essays was—"The Character of the Articles of Confederation, as well as of the Constitution, and a Comparison of their main Points and Features."

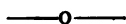
Since that time the author has been frequently urged to publish it, for the reason that there appears to be no work, in *small compass* and *popular form*, that contains the origin, reason of adoption, and general effect of the distinguishing provisions of our Constitution.

While in a Republic, where every man forms a part of the Government, it is of the most vital importance that correct ideas, at least of the fundamental principles upon which that Government is

established, should be universally disseminated, not one in a hundred, perhaps, can afford to give, or cares to give, the time necessary to read large works on the subject; the great majority contenting themselves with opinions gleaned from partisan editorials or still more partisan speeches; and hence we find a most astonishing amount of ignorance prevailing, even among those generally well informed, as to this subject, with which it should be the *duty* of every voter to acquaint himself.

To remedy this, some *small* work, whose perusal would occupy but a short time, seemed desirable; and if this volume shall succeed in bringing even one American citizen to a better knowledge of the Constitution under which he lives, and better prepare him to exercise his powers as such a citizen, the author will feel amply repaid for the time spent in its preparation.

THE  
ARTICLES OF CONFEDERATION  
*vs.*  
THE CONSTITUTION.



IN briefly treating the subjects embraced in the title—subjects which include so wide a field for investigation and remark as to require volumes for their full consideration—we propose to confine our attention at this time exclusively to those points of essential variance in the provisions of the two instruments which produced fundamental differences in the forms of government established under them, as the division of the topic which presents the most of interest and practical utility to the American student of political science, or conscientious American voter, in our day; the object being to condense within the limits of a volume of such moderate dimensions, that no man,



however pressed for time or deficient in educational advantages, may be deterred from reading it, the main points of practical interest connected with the subject of the structure, strength, and nationality of our form of government.

No one can now doubt, in view of the light thrown on the subject by experience, that the Articles of Confederation contained elements of weakness, which in the Constitution were replaced by elements of power; and the question therefore arises, "What were the most important and material of the changes which produced this improvement?" This subject we propose to treat, for the sake of convenience of arrangement, under the following general heads:

I. The Articles of Confederation, and the weakness of the Government under them.

II. The Constitution, and the strength of the Government and prosperity of the People under it.

III. The causes of this difference in the comparative strength of the Governments established by these two instruments, as seen in the distinguishing characteristics and differing provisions of the instruments themselves.

I.

THE ARTICLES OF CONFEDERATION,  
AND THE WEAKNESS OF THE GOVERNMENT UNDER  
THEM.

IN considering the provisions of the "Articles of Confederation," and their inherent weakness as the foundation of a National Government, we are to recollect the circumstances under which they were adopted, and not to judge those who framed them as deficient in political knowledge or foresight. Indeed, even if they had been in possession of all the experience which three-fourths of a century of unexampled change in governments has given to us, it is doubtful whether at that time they could have arranged any stronger system of government which would have been acceptable to the States. The "Articles" were, if anything, in advance of the people in their nationalizing provisions, however imperfect those provisions may have been; and it required years of trial and suffering, and the

certainty, founded on experience, that nothing less than a truly National Government could bring permanent peace and prosperity, to do away with the pride and prejudice of locality, and prepare the people to accept so strong and consolidated a Government as that provided by the Constitution.

Throughout the whole history of the Colonies, feelings of jealousy greatly preponderated over those of fraternity, and it was only in the face of imminent danger and peril, or when forced by necessity, that any union was formed among them, until by time and the ameliorating influences of more frequent intercommunication, their prejudices gradually wore away and an American national feeling took the place of the more contracted Colonial or State pride. Properly to appreciate the "Articles," it will be necessary to glance at the previous history of the Colonies with special reference to the subject of union.

Settled at widely differing times, extending over a period of a century and a quarter, their original inhabitants coming from entirely different motives and under entirely different auspices—some to seek adventure, some to search for gold, some for religion's sake, some

for the sake of trade, some to escape a prison, some to find a home; differing in customs and language—the Eastern Colonies being settled from England, New York from Holland, Delaware from Sweden, and South Carolina principally from France; differing in religion—at Plymouth, Puritans; at Boston, Brownists; in Rhode Island, Baptists; in New York, Reformed Dutch; in Pennsylvania, Quakers; in Delaware, Lutherans; in Virginia, English Churchmen; in the Carolinas, Huguenots—no great community of feeling among them in the first place was to be expected.

Travelling being slow and tedious, each Colony was as distant from its neighbor in point of time as New Orleans is now from New York; consequently communication between them was not frequent, and scarcely a man in the country had visited the whole range from New Hampshire to Georgia. This is forcibly illustrated by the fact, that even so late as 1787, it was urged as an objection to the plan of choosing a President by electors, that men could not be found by the distant States to take the long journey to the Capital for that purpose! Thus strangers to each

other in every respect—with no community of ideas or of interests—it was not strange, perhaps, that each viewed the others with feelings of jealousy, as rivals in trade and in the regard of the mother country. Gov. Pownall, in his work on the administration of the Colonies, declared that the “Colonies had no one principle of association among them, and their manner of settlement, diversity of character, conflicting interests, and mutual rivalry and jealousies, would render a union impracticable.”

As we have remarked, it required some danger by which all were threatened, and which could best be averted by combined action, to induce them to act in unison. The first union formed among the Colonies was in the year 1643, in New England, when, in order to protect themselves against expected assaults, the four Colonies of Massachusetts, Plymouth, Connecticut, and New Hampshire, formed a “Perpetual League,” offensive and defensive, for the common defence against the Indians and Dutch, to be distinguished by the name of “The United Colonies of New England.” This Confederation, which may be considered the foundation of all future associations of the Colonies, lasted

forty years; its system of government being representative. A Congress was held annually, to which each Colony sent two Commissioners, a three-fourths vote binding the whole; the "majority rule" being thus introduced in contradistinction to the "unanimous consent" of confederated States, which it had been usual to require in the Old World. Thus even in this first attempt at government-making in America, we find the germs of what we may call the "American type;"—a representative body, holding sessions at frequent and regular intervals, in which the decision of a majority is decisive. Further than this, they adopted a provision similar to that long afterwards incorporated in the Articles of Confederation, that no two Colonies were to enter into a separate league; and if a member of the league violated any article of it, or in any way injured another Colony, the members of the disinterested Colonies were to decide the matter. This association, as we have seen, existed upwards of forty years, during the whole period of the civil commotions in England, the Commonwealth, and the reign of Charles II., through all of which time the attention of

the British government was fully occupied with home affairs; and it was only finally dissolved when the entire charter government of the New England Colonies was subverted by James II.

Following this, the necessary coöperation of the Colonies required by the hostilities of the Indians, and the menacing attitude of the French settlers on the North and West, gradually brought them more into communion with each other; and this feeling of fraternity was increased by occasional Congresses of the Governors and Commissioners from the various Colonies to consider matters connected with the general interests of all.

The dangers which they equally shared in the American portion of the wars of the Spanish and Austrian succession (known here as "Queen Anne's" and "King George's" wars), and the expeditions which they jointly undertook against the French, contributed to unite them greatly in feeling and sentiment, even before the more extended operations of the "French and Indian War" exposed them to conquest or annihilation, and caused them to forget whatever minor differences still

existed, in their joint struggle with their enemies for the control of the continent.

Nothing serves to unite persons or States so rapidly or so firmly as community in danger; and under the pressure of the imminent peril presented by the alliance of the French with the native savages, a far more important step towards a union than had ever before been contemplated was taken. We refer to the Albany Convention of 1754, where seven of the Colonies were represented, and in which Dr. Franklin was the leading spirit.

“The Commissioners who met in the Congress,” says Chancellor Kent, “who enrolled among their members some of the most distinguished names in our Colonial History, asserted and promulgated several invaluable truths, the proper reception of which in the minds of their countrymen prepared the way for their future independence and our present greatness.”

The Convention unanimously resolved, “that a union of the Colonies is necessary for their preservation, and Parliament must be applied to to establish it.”

The celebrated “Plan” drawn up by Dr.



Franklin and adopted by this Convention, is of the greatest interest to the American student, but must be passed over here with but a word. It provided for a general government, to consist of a "President-General" appointed by the king, and a "General Council" composed of representatives of the respective Colonies. An Advisory Council, similar to those which then existed in nearly all the Colonies, and still are found in Massachusetts and New Hampshire, was also provided, to be composed of the Governors of the Colonies.

The points to which our attention is more particularly drawn when reviewing the "Plan" in connection with the subsequent "Articles of Confederation," are—

1st.—The *National* spirit developed throughout.

2d.—The power given to the *General Government* to raise and pay soldiers, build forts, equip vessels of force, etc.

3d.—The Colonies were not to be represented *equally*, but *in proportion to population*. This was the first occasion upon which this idea had been suggested, the New England Colonies in their Confederacy having been equally represented.

In this the Albany Plan was in advance even of the "Articles" in its national spirit, and served as the prototype of the Constitution itself.

4th.—Taxation was to be laid by the "Great Council" alone.

5th.—The military officers were to be nominated by the President-General and approved by the Council; a system afterwards introduced by the Constitution for all national executive appointments, and now to be found in the organic law of every individual State.

The men who composed the Convention were, however, much in advance of their constituents in their liberal and national ideas, as was signally demonstrated by the fact that the "Albany Plan" was rejected by *every one* of the Provincial Assemblies.

Even the united enterprises of the succeeding war (which extended, it will be recollected, from Canada to Tennessee), did not entirely eradicate the sectional jealousy and Colonial pride which had prevailed; so that, to use the words of Chancellor Kent, "we were destined to remain for some time longer separate, and in a considerable degree alien Commonwealths, jealous of each other's prosperity,

and divided by policy, institutions, prejudice and manners;" and Dr. Franklin was obliged to say, some years later, that "a union of the Colonies against the mother country is absolutely impossible; or at least without being forced by the most grievous tyranny and oppression."

The mother country, however, proceeded by that "grievous tyranny and oppression" to provide just the means which the learned Doctor considered necessary. Thus the news of the passage of the "Stamp Act" was quickly followed by the assembling of the First Colonial Congress (Oct. 7, 1765), at which nine Colonies were represented by twenty-eight delegates, and where it was boldly declared that the sole power of taxing the Colonies lay in their own legislatures; and at the same time we find the national feeling expressed by the frequent use of the one word "America" for the Colonies collectively.

The bold stand taken by the people of Boston against British taxation in 1768, called forth resolutions of approval and support from almost every Colonial legislature; to such a degree, indeed, that the Governors of North Carolina and Virginia thought it necessary to

dissolve the insubordinate assemblies of those Colonies early in the ensuing year.

The events succeeding served to heighten the national feeling in proportion as the hatred to the mother country was increased ; and the Virginia Legislature, evidently considering a blow aimed at one Colony to be an injury to all, appointed the day on which the Boston Port Bill was to go into execution—June 1, 1774—as a day of fasting, humiliation, and prayer. Indeed, the national sentiment at this time seems to have been general throughout the country.

A second Continental Congress was simultaneously proposed by meetings held at New York and Philadelphia, and by the Legislature of Connecticut. Patriotic meetings were held at Annapolis and Baltimore. The Virginia Legislature, which had been dissolved by Gov. Dunmore on account of its appointment of the “day of fasting,” met informally on that day and signed a declaration that “an attack upon one Colony is an attack upon all, threatening ruin to the rights of all, unless repelled by the united wisdom of the whole.” Even as far south as Charleston, a public meeting of citizens resolved to support Massachusetts in the

vindication of her rights ; and when the Congress met in September, at Philadelphia, every Colony but one (Georgia) was fully represented.

This Congress, composed of the best and most patriotic men of the time, resolved that "the whole continent ought to support Massachusetts in resistance to the unconstitutional change in her government." Every feeling opposed to unity and fraternity seems to have been forgotten. Again a single name is used for the whole body of the Colonies, as in the sentence, "the attempts of a wicked administration to enslave *America*." At this Congress was formed the "American Association," pledged to non-intercourse, and embracing members from every State under the one name of "American." "The signature of the Association by the members of Congress may be considered as the commencement of the American Union," says Hildreth.

Events now crowded upon each other. Before the Congress met again, hostilities had commenced in Massachusetts, and the blood of the first martyrs to the cause had been shed to cement the national unity ; and during the summer legitimate British authority entirely

ceased in the Colonies, most of the royal governors fleeing from the popular indignation, and taking refuge on board the English shipping. The Congress, immediately upon its reassembling, was asked by Massachusetts to assume control of the army then before Boston, thus making the army the representative of all the Colonies ; and but a few days thereafter, the appointment of General Washington as Commander-in-chief, completed the united or national character of the struggle.

This act showed the necessity for union which the members of the Congress felt to exist. They had no authority from a State or Colony to perform such an act ; indeed, they had no legitimate authority to perform *any* act of government ; but directing their course by the necessity of the case and the known support of the people, they took upon themselves large powers throughout the entire war—no regular government being established till near its close.

In the present instance, the very words of the resolution appointing General Washington breathe a *national spirit* ; being, “ to command all Continental forces raised or to be raised for the defence of *American liberty*.”

Early in the next year the famous Mecklenburg Declaration was issued, which spoke of the United Colonies as "*this country*;" soon followed by the official Declaration of Independence, on the ever-memorable 4th of July, 1776. Throughout the whole of this immortal instrument the ideas of Liberty and Union are closely blended. It was never referred to the separate States for ratification; nor did any separate State ever declare its independence. The independence named in the Declaration was of Great Britain, not of each other.

The national sentiment had now for the first time reached its height. Flushed with thoughts of independence and boundless prosperity, no ideas of jealousy and disunion entered the minds of the people.

The first clause of the preamble speaks of "*one people*." In the last section of the arraignment of the King, it says, "such a prince is unfit to be the ruler of a *free people*;" and the concluding words are, "the foregoing declaration was *by order of Congress* engrossed and signed."

It would be aside from our purpose to consider the history and nature of the revolutionary government existing from the year 1775 to

the time of the Articles of Confederation. It was the creature of necessity, and never formally constituted—the Congress exercising all the functions of government, even the most high and absolute, and its acts being acquiesced in by the people, as necessary to the welfare of the nation. Its powers were entirely undefined and discretionary, and in some instances exercised in a most remarkable manner when the public safety seemed to require it, as in the dark days near the close of 1776, when Congress invested General Washington with dictatorial power over the lives and property of all citizens of the United States for the space of six months.

This government, however, like all of a revolutionary origin, was but a transition stage while the nation was preparing something more permanent. Even before the Declaration of Independence, Congress commenced (June 11, 1776) the work of arranging a plan of Confederation; but so many were the rival interests developed in the course of the work, that a year and a half was required to digest a system acceptable to all sections. The "Articles" were adopted by Congress, November 15, 1777, and then sent



to the respective State legislatures for ratification.

As we have already stated, during the debates attending the formation of the Articles, the local jealousies and sectional differences which had been forgotten during the fervor of the patriotic outburst at the commencement of the war, developed themselves to a full extent, and left their impress on the "Articles" themselves. Hence we find the doctrine of State Sovereignty plainly set forth in that instrument, in conflict with the national spirit which also makes itself apparent.

These two principles, between which, from the foundation of the Government to the final overthrow of the former and the glorious vindication of nationality as the result of the late rebellion, there has ever existed an endless and irrepressible conflict, displayed their antagonism in this first constitution of the nation as distinctly as in later days. The whole instrument, from beginning to end, gives evidence of the conflict.

Thus, it is called "Articles of Confederation and *perpetual union*," and the words "*perfect union*" are several times introduced; while the first article after that containing the

name of the confederacy, declares that "Each State retains its sovereignty, freedom and independence"—*sovereignty*, of course, implying a right of withdrawal.

Many attributes of sovereignty are given to the Federal Government—as the exclusive War Power, &c.—yet in the Congress everything is decided by separate States, and many measures of importance have to be approved by the distinct Legislatures in order to have validity; a *single State*, as we shall hereafter see in case of the Import Duty, having the power to clog the wheels of government for years.

Various *obligations* are laid upon the States for the public good; but no *power* is anywhere vested to enforce the performance of these obligations. Apart from these virtual contradictions, the provisions of the articles were such as necessarily to establish a weak Government.

The result was as might have been foreseen. The Congress which exercised power under them, succeeded very tolerably in conducting affairs during the war, when the common danger made it necessary that the Federal authority should be maintained; but at the

establishment of peace, the condition of the Federal Government became most contemptible and deplorable. Literally, there was "none so poor to do it reverence." Braved by the smallest and most insignificant States, with no power to carry its decrees into effect, or even to enforce the obligations of its foreign treaties upon the separate members of the Confederacy, it became a by-word and a reproach at home and abroad.

The causes of the innate weakness of the system under the "Articles," are now patent to all. The lack of any separate Executive; of a Judiciary; the dependence of many measures upon the separate votes of the States to give them validity; above all, the entire want of *power* in the Central Government to make itself respected and to enforce obedience to its laws. To use the words of Madison in the Introduction to his Record of Debates in the Constitutional Convention, "The radical infirmity of the 'Articles of Confederation,' was the dependence of Congress on the voluntary and simultaneous compliance with its requisitions by so many independent communities, each consulting more or less its particular interest and convenience,

and distrusting the compliance of the others." And Randolph, in the State Convention of Virginia, emphatically calls it "a system which provided no means of enforcing the powers which were nominally given it;" and adds: "Was it not a political farce to pretend to vest powers without accompanying them with the means of putting them into execution?"

The impotence of the Government to enforce the collection of taxes, naturally destroyed the financial credit of the country. The treasury could only be supplied by the continual issue of irredeemable paper currency, which sunk in value as its volume increased.

During the first half of 1778, twenty-three and a half millions was thus issued by Congress, and 40,000,000 more was added before the end of the year; while the currency fell in value, until, in the beginning of 1779, it was sold at six for one at the North, and eight for one at the South. By September of the same year, it was worth but one-twentieth of its amount in gold; yet during all this time it was a legal tender, and we can judge of the business confusion and inflation arising under such circumstances. Congress tried by every

means in its power to prevent the depreciation, but without effect. On November 1, 1779, when \$200,000,000 of currency had been issued, it stood at thirty for one, and by February 15 of the succeeding year, had fallen to forty for one.


As taxes could not be raised in cash, Congress necessarily adopted the plan of calling on the States for *specific* supplies, such as flour, corn, rice, beef, pork, &c., to be credited to the States furnishing them at a fixed tariff of prices. In the summer of 1780, the depreciation became such that the subject could no longer be overlooked by Congress, which adopted a standard of depreciation, commencing with one and three-fourths for one in March, 1778, and ending with forty for one two years later; and the bills were henceforth to be received at these rates. At the same time a new issue of paper was made, to be a legal tender for the amount of its face, known as the "new tenor." But this project failed as signally as had its predecessor. The legal tender acts were then repealed; but still, as the old paper continued to depreciate, the new suffered a proportional decline. The issues of the separate States were by this time large,

and added greatly to the volume of Continental currency.

The paper fell, during the summer of 1781, rapidly to one hundred for one, two hundred for one, five hundred for one ; finally it sunk to one thousand for one. The soldiers in the army mutually agreed not to receive it, and before the new year it had lost all value as a circulating medium.

The cause of these financial disasters is not to be found in any want of ability or patriotism in Congress, but in the radical defects in the governmental system, which deprived the Federal authorities of all power to collect the taxes which they imposed. Thus of the \$60,000,000 in currency required of the States from Jan. 1, 1778, to Sept. 1, 1779, but \$3,000,000 was ever paid into the treasury. Some States paid, while others did not. When it was determined to call in the Continental currency, the quota which each State was to contribute was fixed by Congress. A few paid in full, several paid partially, some not at all.

The next requisition was for \$11,000,000, \$6,000,000 in supplies, and \$5,000,000 in silver. Of this but \$1,200,000 was ever paid,



and six of the States did not contribute at all. Rufus King stated in the Massachusetts Convention that two of the States had not paid a single farthing into the Federal Treasury from the day of their signing the Articles of Confederation to the date at which he spoke (1788).

Said Alexander Hamilton in the New York Convention: "The States weighed the requisitions by their own local interests, and have only executed them so far as suited their own particular convenience or advantage. There have been thirteen different bodies to judge of the measures of Congress, and the operations of Government have been distracted by their taking different courses. Those who were to be benefited complied with the requisitions, others totally disregarded them."

Madison forcibly expresses the same ideas in the following words: "The result of the ordinary requisitions of Congress only served to display the inefficiency and impotency of the authority making them. Not a single State had complied with *all* the requisitions made upon it; many of them had failed almost entirely; and in one case (New Jersey) expressly by act of Legislature refused compliance." As if to add insult to injury, we find

it recorded that in November, 1782, the Assembly of Pennsylvania sent in a memorial complaining of the neglect of Congress in providing for the public debt, and expressing an intention to apply the produce of the Federal taxes just levied in that State (the taxes being collected by the authorities of the separate States, it will be recollected), towards satisfying the Federal creditors residing therein.

The same difficulties here mentioned have been experienced in all Confederacies similarly weakly constituted.

This is to be seen in the history of the Netherlands, and every other Confederation where there was no power to compel obedience to the Federal authority, or where compliance with Federal demands was optional with each individual State. Thus De Witt, a Dutch writer of prominence, says, that in the case of the Netherlands, during forty years of war with Spain, the single Province of Holland paid fifty-eight per cent. of all the expenses thereof. Two or three of the Provinces never so much as passed a resolution to pay anything. The same fatal weakness is found in the other leagues, or Confederacies, of a similar nature,—the Amphictyonic, the



Lycian, the Achaian and the German—although, as Chancellor Kent justly observes, “Our Confederacy was more deficient in this respect than any of its predecessors.” “There was no provision,” he continues, “in the Articles of Confederation enabling Congress to add a sanction to its laws. In this respect they were more defective than some of the other Federal Governments which are to be met with in history. The Amphictyonic Council in Greece, had authority to fine and punish their refractory States. The Germanic Diet, as it formerly existed, could put its members under the ban of the Empire, by which their property was confiscated, and it was aided in enforcing obedience to its laws by a federal judiciary and an executive head.”

“A nation without a National Government is an awful spectacle,” said Hamilton; and such a spectacle was presented by the American people at that time.

The weakness of the Government was evidenced in many other ways besides the deplorable condition of the Federal finances.

The “Articles” provided for the appointment of a “Standing Committee,” consisting of one member from each State, to represent

the government, and perform its functions during the recesses of Congress. But this Committee, when appointed, first divided into antagonistic parties, and its members soon after abandoned the Capitol entirely, to attend to affairs in their respective States, thus leaving the Federal Government with no visible representation.

After this unfortunate experiment, the plan was not again attempted, the Congress sitting nominally through the entire year, although so frequently were the delegates absent, that after a few weeks no business could be transacted; and thus delay and confusion in the conduct of affairs was added to the other difficulties of the situation.

Hon. Jacob Read, in the South Carolina Convention of 1788, instances two cases as illustrating this subject, and displaying what he chose to call "the farcical character" of the Congress of the Confederacy. One was, that "when the Treaty with England should have been ratified, a sufficient number of members could not be collected in Congress for that purpose, so that it was necessary to dispatch a frigate, at an expense of \$4,000, with particular directions for Mr. Adams to use his

endeavors to gain time. His application proved successful, otherwise very disagreeable consequences must have ensued." The other case was the following: "A party of Indians came to Princeton for the purpose of entering into an amicable treaty with Congress. Before it could be concluded, a member went to Philadelphia to be married, and his secession had nearly involved the western country in all the miseries of war."

Indeed, when we consider the peculiar construction of Congress, this absenteeism is not quite so blameworthy as it appears at first sight. Thus it is mentioned in Elliott's Debates, vol. I. p. 53, that "the delegates, being paid by States, some were forced to return on account of remissness of the State authorities;" and Rhode Island is particularized as having failed to pay her delegates.

Even the plain provisions of the "Articles" themselves were disregarded. Thus Georgia made separate war against the Indians, and concluded separate treaties with them.

Troops were raised and kept up without the consent of Congress, by Massachusetts, in direct contravention of the second section of the "Articles." Separate compacts were entered

into by Pennsylvania and New Jersey, and between Virginia and Maryland, without the consent of Congress; and in the latter case, the Virginia Legislature not only refused to apply to Congress for its sanction of the arrangement, but even voted *not to communicate the compact* to that body *at all*.

"The Federal Government," says Randolph, "could not check a quarrel between States, nor a rebellion in any, not having constitutional power nor means to interpose;" and Madison mentions a flagrant instance of the disregard of the Federal authority and the fundamental law, in "the violation not only of the treaty of peace, but of treaties with France and Holland, which were complained of to Congress." So impotent did the Federal authority show itself in this connection, that other nations declined to make treaties with us because we had no *real government* capable of performing any obligations it might assume.

Indeed, although the "Articles" had gone into operation in 1778, on their adoption by eight States, it was not till March 1, 1781, that they were ratified by the whole thirteen; and then the last one (Maryland) only consented

in order that the prospects of peace might be improved by presenting a firm and united front to the enemy.

Upon the establishment of peace, matters became, if possible, worse than ever. Of the eight million dollars assessed by Congress for the expenses of the year 1782, requisitions for which were sent to the several States, but \$420,000 ever reached the Treasury. Many ascribed the weakness and inefficiency of the Government to the Republican form adopted, and thought that relief could only be found by the establishment of a monarchy; and this feeling found expression finally in 1782, in a letter most plausibly composed, offering to General Washington the position of King, if he would give countenance and assistance to the scheme.

This proposition was made in behalf of a large number of army officers who were dissatisfied at the failure of Congress to pay them their arrears of salary; the letter itself being written by Colonel Lewis Nicoll, of the Pennsylvania line. It is unnecessary to add that the scheme received a most emphatic rebuke from the great man to whom it was proposed, and by being thus made public lost all its

power for evil. Meanwhile the discontent of the army officers increased daily; the war was virtually at an end, and their situation was really most unfortunate; the currency being so much depreciated that their pay did not suffice for their necessary expenses, without making any provision for their families' support. Congress was unable to remedy the evil, for it was powerless to raise funds; and the consequence was the celebrated Armstrong address—an anonymous but most energetic and artful appeal to the passions and prejudices of the officers of the army—the effect of which, had its design been consummated, would have been, by a *coup d'état*, to overthrow the authority of Congress and establish a military power in its place.

In this instance, again, however, the great influence and stern integrity of Washington saved the Republic from the threatening danger; but the circumstances are a strong indication of the perfect inefficiency and powerlessness of the Government at the time.

Shortly after these occurrences, early in the summer of 1783, Congress, then in session at Philadelphia, was obliged to submit to an in-

sult from a body of returned Pennsylvania soldiers, who first showed symptoms of insubordination by dispatching an insolent letter to that body, and afterwards, marching from their quarters in regular order, surrounded for three hours the building in which both Congress and the Pennsylvania Legislature were assembled, sending in demands for immediate payment; and the difficulties assumed so serious a form that Congress removed to Princeton, and 1,500 men were required to restore order.

The necessity for some change became more and more apparent during the succeeding years. The finances were gradually reaching a lower point, if possible, than ever; and the affairs of the country gradually became involved in the utmost confusion. The authority of Congress was treated with contempt both at home and abroad. Foreign nations refused to hold intercourse with a Government which was only such in name, and possessed no real power even to carry out its most ordinary decrees.

The whole army of the United States was, in 1784, reduced to *eighty men*. In short, to quote from the "Federalist," "Each State,

yielding to the voice of immediate interest or convenience, successively withdrew its support from the Confederacy, till the frail and tottering edifice was ready to fall upon our heads and to crush us beneath its ruins."

"Our situation is becoming every day more and more critical," writes Madison to Randolph. "No money comes into the Federal Treasury, no respect is paid to the Federal authority, and people of reflection unanimously agree that the existing Confederacy is tottering to its foundation. Many individuals of weight, especially in the Eastern district, are suspected of leaning towards monarchy. Other individuals predict a division of the States into two or more Confederacies. It is pretty certain that if a radical amendment of the single one cannot be devised and introduced, one or other of these revolutions—the latter no doubt—will take place."

And previous to that, the Legislature of the State of New York (July 21, 1782) had solemnly resolved "That the situation of these States is, in a peculiar manner, critical; and affords the strongest reason to apprehend from a continuance of the present constitution of the Continental Government, a subversion of



the public credit, and consequences highly dangerous to the safety and independence of these States."

So painfully was the necessity for some improvement felt by the members of Congress themselves, that in 1784 (Nov. 26) Richard Henry Lee, then President of the Congress, wrote to Mr. Madison, "it is by many here suggested as a very necessary step for Congress to take, the calling on the States to form a convention for the sole purpose of revising the Confederation, so far as to enable Congress to execute with more energy, effect, and vigor, the powers assigned to it, than it appears by experience that they can do under the present state of things."

The first practical suggestions of a method of investing the Government with the requisite power, and at the same time not destroying the State organizations, was in the winter of 1784-85, when Noah Webster struck the keynote, in proposing a new system of government, which should act "*not on the States, but directly on individuals*, and vest in Congress full power to carry its laws into effect."

The meeting of a Convention at Annapolis, which, though called for purely commercial

purposes, contained some of the most prominent statesmen in the country, presented the first favorable opportunity for exercising the now universally felt desire for a change in the Federal system of Government.

As this Convention had no power delegated to it except as to commercial matters, and did not represent all the States, it contented itself with memorializing Congress on the subject of the necessity of amending the "Articles" in various particulars.

The Congress, entirely coinciding as to the inefficiency of the Federal Government, immediately responded to the suggestion, and on the 21st of February, 1787, resolved—

"That it be recommended to the States composing the Union, that a Convention of Representatives be held for the purpose of revising the 'Articles of Confederation,' &c.'

This Convention met May 25, and agreeing that the "Articles" were too radically defective to form a desirable framework for the Government, concluded, instead of endeavoring to *revise*, to form an entirely new instrument.

The result was the

CONSTITUTION OF THE UNITED STATES.

## II.


## THE CONSTITUTION.

## THE STRENGTH OF THE GOVERNMENT AND PROSPERITY OF THE PEOPLE UNDER IT.

IF the good opinion of those living under a specified form of government is the best criterion by which to judge of its value and success, then the present Government of the United States is as near perfection as anything mundane can well be.

Never did an instrument receive from a nation the respect, the reverence—I may say the *idolatry* almost—which the Constitution of the United States has received from the American people.

Says Hickey, in the introduction to his little work (page xxxiv.): “Of a Constitution so wisely contrived, so strongly raised, and so highly finished, it is hard to speak with that praise which is justly its due: the thorough and attentive contemplation of it will furnish its best panegyric.”



Edward Everett, in his Boston speech of April, 1863, calls it "The great political consummation of the design of Providence in the discovery and settlement of America; the happy framework of some of the wisest and best men that ever lived, intended to effect the extension of civilization in the shortest possible time over a vast continent lying in a state of nature, \* \* \* and to combine, upon a scale of unprecedented magnitude, the home-bred and fireside blessings of small States and local administrations with the security, influence, and power of a great empire."

President Monroe, speaking of the Government thus established, in his first inaugural address, says: "Such, then, is the happy Government under which we live—a Government adequate to every purpose for which the social compact is formed; which contains within it no cause of discord—none to put at variance one portion of the community with another; a Government which protects every citizen in the full enjoyment of his rights, and is able to protect the nation against injustice from foreign powers."

Mr. Sumner, in the opening sentence of his speech in the Senate, April 8, 1864, says:

“ Mr. President, if an angel from the skies, or a stranger from another planet, were permitted to visit this earth and to examine its surface, who can doubt that his eyes would rest with astonishment upon the outstretched extent and exhaustless resources of this Republic of the New World, young in years, but already rooted beyond any dynasty in history? In proportion as he considered and understood all those things among us which enter into and constitute the national life, his astonishment would increase, for he would find a numerous people, powerful beyond precedent, without a king or a noble, but with the school-master instead.”

And Dr. Lieber, in his pamphlet on “ Amendments to the Constitution,” writes: “ The framers of the Constitution were probably as wise and resolute a set of men as ever sat in high national council. \* \* \* Their work is full of dignity, wisdom, and sincerity.”

Indeed, so far was this love and veneration for the Constitution carried at times, as to be a positive obstacle to the advancement of the nation; to the minds of a large class it had become something sacred—*too* sacred, indeed, for every-day practical use. To use the words

of Mr. McKaye, there was "a peculiar and mysterious virtue and force which it was supposed to embody, and through which the people of the United States, without regard to any higher law or power, were believed to be exempt as well from all the penalties of national unrighteousness, as from all changes and revolutions inevitable to the rest of mankind." Dr. Lieber relates that, but a few years since, a young man of liberal education and excellent family inquired of him, at the conclusion of a lecture on the Constitution, whether he did not believe that that instrument owed its origin to inspiration, and adds : "The ensuing conversation elicited the remark on the part of the inquirer that he had grown up in the belief that the fundamental law of our country had been inspired, or 'very nearly so.'"

It became to this class of men an *end* instead of a means ; to force the growing nation to adapt itself to the "Constitution as it is," was in their eyes the highest statesmanship. To suggest that this object of their adoration might possibly be beneficially amended in order the better to accord with the changing state of the nation, was to them an act only to be performed by the most presumptuous

and sacrilegious. Like the reverence of the Jews of old for their sacred day, which made them forget that "the Sabbath was made for man and not man for the Sabbath," the reverence felt by these men made them equally fail to recollect that the Constitution was made for the nation, and not the nation for the Constitution.

We have only referred to this excessive respect and reverence for the Constitution because no more striking demonstration of the excellence of such an instrument could well be imagined than the existence of such a feeling among those who live under its government. Indeed, the success of our Government and the prosperity of our people have been so great and uninterrupted, that an overweening confidence and pride in the "institutions" of their country was, and still is, the great besetting national failing of the American people.

If anything could justify these feelings it is the splendid position which our Government now justly holds as the strongest, as well as the freest on the face of the earth; and the unexampled growth of the nation in every element of material prosperity.

Under the Constitution we have quadrupled

our population. From 3,929,827 in 1790, it had become 31,445,080 in 1860—an average increase of more than 34 per cent. in each ten years, being a ratio altogether unparalleled in history. In order to appreciate this immense ratio, it may be remarked, that the increase in France in the sixty years from 1801 to 1861, was 37 per cent.; in England and Wales, during the same time, 121 per cent.; while in the United States it reached 593 per cent.

Again: so highly are our institutions appreciated abroad, that within forty years (1820 to 1860) over 5,000,000 emigrants from foreign lands have sought a home within the limits of the Republic.

The original territorial extent of the United States was 820,680 square miles—to-day it contains (exclusive of the late Russian Possessions, recently acquired) 2,936,166 square miles, or 1,879,146,240 acres; the largest amount of *inhabitable* territory controlled by any one Government save that of Russia.

The estimated value of taxable property in the United States in 1791, two years after the Constitution went into effect, was \$750,000,000; in 1810 it had become \$1,800,000,000; in 1850, \$7,135,780,228; and by the last cen-



sus, in 1860, it had reached \$16,159,616,068; thus showing the enormous increase of over nine billions of dollars, and more than doubling in a single decade; and this valuation excludes all property held by religious, benevolent, and other similar associations and institutions, as well as public property of every description.

To take up the item of manufactures, we find that the first accurate statistics are those of 1810, when the aggregate value of articles annually manufactured in the United States was \$198,613,471. What was the extent of this branch of American industry in 1860? The exact figures, according to the census, are \$1,885,861,676; showing nearly a tenfold increase in a half century, while that of the population itself is but about half that proportion! Need we be surprised, then, at the enthusiasm with which the Superintendent of the Census, in view of this enormous increase, exclaims: "Thus it was reserved for the New World to teach the Old that nations may tranquilly exist under the dominion of Liberty and Equality. The Union has advanced with gigantic strides towards its high destiny in the three elements of national power—agriculture,

manufactures and commerce. The results are recorded in the census of 1860." If we turn to the commercial marine, we find that the tonnage of the country, which might almost have been represented by a cypher when the Constitution was adopted, had reached 2,180,764 in 1840, increased to 3,535,454 in 1850, and 5,358,808 in 1860; the vessels represented by this immense tonnage being estimated to be worth \$250,000,000.

The value of articles exported in 1860 was \$400,000,000, and in 1862 \$217,000,000 was exported from the port of New York alone.

The amount of the value of farms exceeded six and a half billions of dollars (\$6,650,872,507), and more than one billion was reported as invested in domestic animals.

In 1863, in the midst of a desolating war, which required the services of hundreds of thousands of the nation's patriotic yeomanry, over 830,000,000 bushels of corn and 171,000,000 bushels of wheat were produced.


In the ten years from 1850 to 1860, the banking capital of the country increased from \$227,000,000 to \$422,000,000; the 8,589 miles of railroad in use at the former date,

had been lengthened to 30,593 at the latter, at an expenditure of over \$850,000,000; and 4,000 miles of telegraph wire had been put in operation.

If from the prosperity of the people under the Constitution we turn to consider the strength and stability of the Government itself, the events of the past few years are a sufficient answer to all doubts.

The American of the year 1866 may proudly say, that the Republican form of Government as developed in the United States, is the strongest, most powerful, and most enduring which the world has yet seen; and this not by way of vain boasting, as might have been the case in times past, before the Government had gone through the fiery ordeal of the Rebellion, but with that assurance and certainty which only experience can give. During the past six years the Government under the Constitution has endured the severest trial which any Government was ever called upon to sustain.

If it had been given to its enemies to select or invent the most severe and searching ordeals possible, in order to test its strength and endurance, to none more severe than those



through which it has passed could it have been subjected.

It had long been the confident assertion of those opposed to free institutions, that no Republican Government could stand against internal dissensions and rebellion. Though powerful enough in warding off blows from without, yet when assailed from within it was without strength to resist; like the arch, which will endure any pressure from without, but which can be overthrown by the slightest application of force from within. And this was urged, not without plausibility both of reason and from experience. For much of the power of a Government "of the people" certainly seemed to be lost when it was opposed by a part of those very people whom it was intended to represent; and all history had shown that while Republics had arisen in every age, displaying great power in their revolutionary inception when throwing off the yoke of previous oppression, and in resisting foreign domination or invasion; yet when assailed from within by dissension, division, and finally rebellion, uniformly they had crumbled into fragments, or fallen a prey to some ambitious or unscrupulous party leader. Examples of this

were to be found in every age ; in Greece and Rome in early days, in the Republics of Italy and Germany in mediæval times, and more recently in the ever-uprising Central and South American Republics. Thus good ground had been given to the idea that a republican form of government was almost synonymous with instability, revolution, and change.

Upon us, then, as the champion Republic of the world, devolved the duty of removing this impression, and demonstrating that a *properly constituted* republican form of government, is the strongest at home in time of domestic commotions and civil war, as well as the most powerful abroad in warding off the attacks of foreign foes. The idea cannot probably be better expressed than in the words of an address of the Old Congress, in 1783 (April 26), as follows: "The citizens of the United States are responsible for the greatest trust ever confided to a political society. If justice, good faith, honor, gratitude, and all the other qualities which ennoble the character of a nation, and fulfil the ends of government, be the fruits of our establishment, the cause of liberty will acquire a dignity and lustre

which it has never yet enjoyed, and an example will be set which cannot but have the most favorable influence on the rights of mankind. If, on the other side, our Government should be unfortunately blotted with the reverse of these cardinal and essential virtues, the great cause which we have engaged to vindicate will be dishonored and betrayed, the last and fairest experiment in favor of the rights of human nature will be turned against them, and their patrons and friends exposed to be insulted and silenced by the votaries of tyranny and usurpation."

The issue, therefore, was one of an even more momentous character than at first appeared. We fought not only for our own existence, but as the representative of free institutions we were placed in the arena, that from our success or failure the verdict of the world might be made up. If we, the greatest Republic in extent and population that the world had ever seen, placed on a new continent, with no complications from entangling alliance or intriguing neighbors, with boundless resources and boasting of our universal education; if we, placed in this favored position, failed, centuries would elapse before any people

would arise venturesome enough to attempt again the experiment of freedom.

And although the trial was one of difficulty and danger to us, yet perhaps it is as well for the world in general that it was so severe, in order to present simultaneously every danger to which a government could possibly be exposed, and set at rest, at once and for ever, the question of the strength of Free Institutions when exercised under a proper constitution. In the triumphant vindication of Republicanism which we achieved, the cause of liberty finds all the stronger argument from the fact of the special and accumulated dangers to which we were exposed. For, as I have said, *every danger* which in the nature of things could have assailed a Government in the course of centuries, came almost simultaneously upon that of the United States within little more than four years.

*First.—We were assailed by Rebellion.*

This is the severest test of the stability of a Government. In case of a *foreign* war the people naturally rally around their Government, if for no other reason, at least from that principle illustrated by Dr. Holmes by the case of

the "rival steamboats," which impels us always to desire the triumph of our own side; and besides this, in time of foreign invasion necessity compels the subject to assist the Government in order to protect his own home.

But in case of *Rebellion*, those opposed to the Government are a part of the very people upon whose support it could have relied in time of foreign difficulties. Every man involved in the rebellion is to be counted double. He is one taken from the supporters of the Government, and one added to its enemies. Then there is a secrecy in the preliminaries of revolution, and an impetuosity and dash in its open acts, which give it additional power. Looking at history, we find that hundreds of Governments, of every form and variety, have been overthrown by conspiracy and rebellion; or if not destroyed when thus assailed, have been obliged to preserve their existence by the most humiliating concessions to the insurgents. Yet, while numerous Governments, supposed to be the "strongest" because of the most absolute type, had fallen before revolutionary force; while as recently as 1848, almost every throne in Europe was thus made to tremble; yet when *its* turn to be assailed by Rebellion



came, *the Government of the United States, under the Constitution*, STOOD FIRM.

*Second.—We were not only assailed by a Rebellion, but by the greatest Rebellion the World had ever seen.*

The section of country which revolted embraced eleven great States, containing an area of over 730,000 square miles, and a population above nine millions; and this without taking into the account Missouri, Kentucky, Maryland, New Mexico, and the Indian Territory, all claimed by the rebels, and which at best were barely neutral. The Confederate Government had at its head men of marked ability, long schooled in the science of politics by their connection with the Government of the United States. The Rebel army was commanded by officers of consummate military talent and attainments; and the army itself was of immense numerical strength—far exceeding in this respect those ever brought into the field by any revolted people.


The vast extent of the seaboard of the Confederacy gave to its people an opportunity of obtaining assistance from abroad in a manner and to a degree which no rebellion

had ever before enjoyed. Yet notwithstanding that this rebellion, in whatever light it may be viewed, was far more powerful and extensive than any which the world had ever seen, still, although thus forced to encounter such a trial as no other Government had ever been subjected to, *the Government of the United States, under the Constitution, STOOD FIRM.*

*Third.—The Rebellion by which we were assailed was one long meditated, while the Government was entirely unprepared.*

The doctrine of Secession was no new idea at the South. Since the days of Nullification, preparations to carry it into effect on the first auspicious occasion had been secretly but no less efficiently arranged.

The so-called "Commercial Conventions" at the South were but nurseries of Treason. Several leaders of the Rebellion, less discreet than their fellows, boldly announced at the commencement of the war that the occasion had now come for which they had been waiting and working thirty years. The means of the Government had been lavishly expended by Southern influence in the erection of numerous forts and arsenals throughout the



Slave States. Military schools were established in all sections of the South for the training of young men who were destined to act as officers when the time for action should arrive; and the writer well recollects how greatly these were increased in South Carolina in 1859 and 1860, in expectation of an early war. Through the active and insidious instrumentality of the Press, the minds of the common people were continually prejudiced against the National Government.

All that caused delay was the necessity for some fit occasion to "fire the Southern heart," and "precipitate the Cotton States into revolution."

In immediate anticipation of Secession, the traitors connected with the National Government conveyed vast stores of arms and ammunition to the Southern arsenals and forts, that they might fall an easy prey to the rebellion when organized. By the same means, as we shall see, the army and navy of the nation were scattered so as to be unavailable for attack or defence in the hour of need.

On the other hand, the National Government was entirely unprepared.

The military establishment was arranged

on the lowest scale of a peace basis. Not a vessel had been built nor a man enlisted in anticipation of the rebellion; nor was the first step taken until after *eight States* had seceded—the Confederate Government been fully organized—nearly every fort in the Southern States captured—the surrender of Fort Sumter forced, and the National Capital threatened! Yet in the face of all these disadvantages, such as no empire, even of those which had fallen before revolution, had ever been obliged to endure, when the shock came, *the Government of the United States, under the Constitution, STOOD FIRM.*

*Fourth.—The Rebellion was assisted by high Government Officials; while the United States Government was administered by one who took no measures to defend it.*


These facts are too patent, and instances illustrating them are too familiar, to require recital.

It may be recollected, however, that Mr. Breckinridge retained his position as Vice-President to the end of his term, though a leader in the councils of the Rebellion;—that Jacob Thompson, while Secretary of the In-

terior, went to Raleigh (Dec. 14, 1860) specially to urge the North Carolina Legislature to rebel against the Government of which he was a prominent member;—that the same Jacob Thompson remained in the United States Cabinet so long as he could be of use to the rebels, and that his final act was the betrayal of the sailing of the “Star of the West,” on Jan. 9, to relieve Fort Sumter;—that Robert E. Lee remained in the service of the United States *until April* 25, having received one promotion *after* the inauguration of President Lincoln (March 16);—that John B. Floyd, as Secretary of War, not content with stealing the Indian Trust Bonds, had arranged the United States army with particular reference to the Rebellion, so that it was with great difficulty that General Scott could collect a bare thousand soldiers to be present at the inauguration, the army being scattered among the Indians in the far West and on the Pacific Coast, except the forces in Texas, which had been placed there under Twiggs, in order to be betrayed into the hands of the rebels;—that the same Floyd had sent vast quantities of arms and ammunition to every Southern fort and arsenal during

the preceding year, that the insurgents might at the outset of the struggle obtain abundant munitions of war, and that this course was continued by him even after South Carolina had formally seceded, and until the people of Pittsburg rose and refused to allow further shipments of ordnance to be made from their city;—that the Secretary of the Navy, apparently with the same design, had despatched the naval forces of the government to far distant stations, so that at the commencement of the war the government had to depend exclusively on its few revenue vessels and on merchant ships to perform its naval service;—and that the officers of the government in command of forts, arsenals, and troops in the insurgent districts, in every instance except those of Major Anderson at Sumter, Lieutenant Slemmer at Pickens, and Captain Hill at Fort Brown, delivered over their trusts to the rebels, as most notably evidenced in the cases of General Twiggs and Commodore Armstrong.

During all this time the President did nothing to counteract the efforts of the rebels or to avert the threatened danger. State after State seceded. The Confederate government



organized at Montgomery and elected its President and Vice-President. Armies were raised and equipped throughout the Southern States. The Governor of North Carolina took possession of the forts, etc., within his jurisdiction, and the Georgia State troops captured Forts Pulaski and Jackson ; but the only response of the President of the United States was a message to Congress denying any power of "coercion" to exist constitutionally in the National Government. Instead of enforcing the laws and protecting the government property, the President sent Caleb Cushing to Charleston with a message guaranteeing that Major Anderson should not be reënforced. Senators from the rebel States uttered the boldest treason in the public debates in the Capitol, and their crime was suffered to pass unnoticed and unrebuked. Loyal legislatures, including those of New York (Jan. 11) and Massachusetts (Jan. 18), tendered the whole military power of their States to the President to assist in the enforcement of the laws ; but their offers were not accepted. In short, the whole action of the government to the 4th of March was a tacit acquiescence in the *fact*, if not the *right* of Secession.

No government was ever before so weakened by treason and imbecility among those appointed to administer it. No other form of government on the face of the earth could have stood a month before a rebellion so assisted and strengthened. But notwithstanding all these unparalleled disadvantages, when the real constitutional powers of the Government to suppress insurrection and secure domestic tranquillity were properly exercised, the rebellion was put down, and *the United States Government, under the Constitution,* STOOD FIRM.

*Fifth.*

One might suppose that no severer test of the strength of a government could be devised than those already enumerated, but the endurance of ours was to be still further tried. An excited political election is at any time a period of danger to government. But the United States was to be the scene of a political contest of unexampled fierceness and excitement, extending throughout the whole length of the country, in the shape of a protracted Presidential canvas, at the very time that the nation was engaged in its life and



death struggle with the rebellion. Could the Government—could *any* government—sustain such a double strain? It was a momentous question. But the struggle only tended to develop the unknown powers of Free Institutions, when properly administered; for when the trial came, *the United States Government, under the Constitution*, STOOD FIRM.

*Sixth.*

Still one more test was to be applied before the fiery trial of the Constitution should be completed. Under a President strong in the affections of the people, the nation was carried safely through its great struggle. But on the 14th of April, 1865, that President was stricken down by the assassin, while attempts were made to take the lives of the other high executive officers of the nation. The violent death of the sovereign would throw any monarchy of Europe into commotion; a conspiracy to murder an entire ministry would be the sure signal of revolution.

The President who fell was dearer to the hearts of his people than any sovereign or minister. But not a moment of confusion or interruption occurred in the regular operations of

the Government of the Republic. The Vice-President quietly took the oath, and assumed the official position of him who had fallen; the wheels of government proceeded exactly as usual; and the nation, sorrowfully doing the last honors to its noble dead, was *never* so quiet.

*The Government of the United States, under the Constitution,* STOOD FIRM.

Thus, through trials of fire and blood, has the Government of the United States proved its claim to be the best, the strongest, that the world has ever seen; and we, while proudly conscious of our own part in achieving this distinction by sustaining its honor in our day, cannot but feel gratitude and veneration towards those great men who, three-quarters of a century ago, laid its foundation on the rock, so that it could not be moved.

Not only did the Government develop this unequalled strength in resisting attempts upon its existence which to any other would have proved fatal, but it displayed a *positive* power during the late war, no less surprising.


As we have already seen, at the outbreak of the rebellion we had no navy. The Government, in the course of four years, during

which its every energy was strained in other directions, formed the most powerful navy in the world, and throughout the whole war kept up a blockade of thousands of miles of coast in so admirable a manner that even the unwilling nations of Europe were forced to acknowledge its perfection. We were without an army. At the call of the President, volunteers thronged to the defence of the Government, and armies arose as if at the wave of a magician's wand. At the time of Lee's surrender, the number of troops actually in the service, according to the official report of Secretary Stanton, *exceeded a million of men!* And the reduction of this immense number on the return of peace—by many considered as a most dangerous operation—has been accomplished quietly, peaceably, without any difficulty to the Government or to the communities into which the late soldiers of the Republic returned. By the Report of the War Department, dated March 28, 1866, there were in the service on the 10th of March of that year but sixty-six thousand nine hundred and eighty-five men in the aggregate, and that number was immediately after reduced by nineteen thousand seven hundred and three;



so that nine hundred and fifty thousand soldiers were quietly returned to the avocations of civil life within the short space of a single year!

If we glance at the financial situation of the country, the strength of the Government is no less signally exemplified, and the difference between its resources under the Constitution and under the Articles surprisingly illustrated. An immense war requires immense expenditures. That money is the "sinews of war," is proverbial; and more contests probably have been prematurely terminated by the financial exhaustion of one party than from any other cause. But the American Government, strong in the confidence and affection of the people, was fully equal to this emergency. The first Treasury Notes offered (April 11, 1861) were all taken at a premium. At the great national uprising after the attack on Sumter, banks and capitalists everywhere placed their resources at the disposal of the Government. But would this readiness to contribute last when the first excitement was over and the popular feeling was cooled by reverses? The facts are the best answer. Every loan presented by



the Government was taken as soon as offered. Without the necessity of applying in any foreign market, nearly \$3,000,000,000 was raised—all the voluntary contribution of the people in support of their Government! The perfect confidence of the nation in the ability of the Government to meet its obligations, is well expressed in the admirable speech of Hon. H. G. Stebbins in Congress, March 3, 1864—a speech all the more valuable as coming from one elected as an opponent to the national administration.

The “seven-thirty” loan was the most successful of any ever offered by any Government. The amounts daily subscribed seem almost fabulous, as for example in May, 1865, when they were as follows:

May 9 . . . .	\$15,165,000
“ 10 . . . .	17,410,000
“ 11 . . . .	14,411,000
“ 12 . . . .	13,762,000

and on Saturday, the 13th, rising to the enormous sum of \$30,451,000!! Speaking of the wonderful success of this and other loans negotiated through the house of Jay Cooke, the “*N. Y. Tribune*” says: “Mr. Cooke has

the right to reflect with satisfaction upon the efficiency of his agency, through which *Seven Hundred Millions* of the series (7.30) have been disposed of."

It is gratifying for us to know that notwithstanding the vast national debt, the present resources of the Government are so large as more than to pay the interest and national expenses—each succeeding Treasury Report showing a reduction to a very satisfactory extent in the principal debt due.

Thus, under the influence of this great instrument—the Constitution—has grown up a Government powerful and enduring; a nation prosperous and happy. In view of these auspicious results, may we not say in the language of Father Paul, quoted by Judge Story in this very connection,

ESTO PERPETUA.

## III.

## CAUSES OF THE DIFFERENCE

IN THE COMPARATIVE STRENGTH OF THE GOVERNMENTS ESTABLISHED BY THE ARTICLES AND THE CONSTITUTION.

IN comparing the two instruments under which our people have lived, certain striking differences at once present themselves.

We will consider, however, only those which materially affected the strength of the Government.

The principal elements of power introduced into the Constitution, and not found in the Articles of Confederation, are the following:

- 1.—The Government of three Branches—Executive, Legislative, and Judicial.
- 2.—The Uni-Executive.
- 3.—The Bi-cameral Legislative system.
- 4.—The increased Nationality of the Government; as seen  
A.—In General Provisions.

B.—In the Character of the Executive.

C.—In the Character of the Senate.

D.—In the Character of the House of Representatives.

5.—The Power of the National Government to reach individuals and to enforce its laws.

These we will take up in their order.

1.—*The Government of Three Branches.*

Ever since government became a science, the division of the great powers of the Government into the three classes of Executive, Legislative, and Judicial, and their separation so far as possible from the improper restraint or influence of each other, has been considered a point of primary and vital importance in the establishment of any liberal political structure. The more separate and distinct these three powers can be kept, at the same time that in matters of general concern they move in harmony with each other, the more perfect, powerful, and durable has been the government established; the more free and happy the people.

The system of checks and balances thus



instituted is as perfect as human foresight can devise or experience suggest. No man in the executive chair, however ambitious or unscrupulous, can succeed in overthrowing the liberties of his country while a legislature freshly from the people is in existence, and the judiciary fearlessly performs its functions; and at the same time the exact extent and limit of the powers of the Judges and the Legislature are accurately marked out in the Constitution of the country, which it is the duty of the Executive in accordance with his inauguration oath to "preserve, protect, and defend." But concentrate all these powers in one body, giving it not only the authority to make laws but also itself to carry them into execution, and in case disputes arise concerning their meaning to interpret them also; and a tyranny the most odious must sooner or later be the result. Such a system would give to the Legislature *absolute* power, not even limited by a constitution, for if the Legislature is itself the judge of the constitutionality of its acts, it is entirely without restraint, and the Constitution becomes of no practical effect or value. To quote the words of an eminent jurist (Story), "The will of those who govern must under such circum-

stances become absolute and despotic, and it is wholly immaterial whether absolute power be vested in a single tyrant or in an assembly of tyrants." "There is no liberty," says Montesquieu, "if the judiciary be not separated from the legislative and executive powers."

Not only does reason show theoretically that this is true, but all experience teaches that in the practical working of the world it is no less so. The nation which possesses a legislature devoted to the work of framing the best laws for the public good, an executive honestly bent on carrying out and enforcing these laws with energy and promptitude, and a judiciary fearlessly performing its duty of expounding them and deciding as to their constitutionality and scope, is thrice blessed in its governmental arrangements.

No political principle is more firmly implanted in the American mind, or, we may say, in the Anglican mind—than this of the absolute independence of each of these three great branches; and nothing is more swiftly condemned by the people than the slightest infringement by either one upon the rights and powers of another. The least suspicion of tampering by the executive with the other

branches, or that undue influence is being exerted, is followed by a cry of indignation from the people, which few other political circumstances can produce. Says Dr. Lieber in his "Civil Liberty," page 206, "one of the main stays of civil liberty and quite as important as the representative principle, is that of which the independence of the judiciary forms a part, and which we shall call the independence or freedom of the law." The respect for this independence of the judiciary is an especially strong sentiment in the American mind; and it has always been a source of surprise and admiration to the foreigner to see how immediate and perfect is the acquiescence which follows the judicial announcement of a principle, although contrary to the popular feeling; or, a decision declaring unconstitutional some favorite measure which had been passed amid great enthusiasm; cases analogous to which are constantly occurring. The Reports show, that up to 1830, the United States Supreme Court had twice declared Acts of Congress unconstitutional; had rendered two decisions against the President, and two against the Secretary of State.

Every State in the Union is organized with

these three great branches of government; and such was the case in the early constitutions of the original "Thirteen." This arrangement is peculiarly adapted to a National Government like that of the United States. Chancellor Kent says, "This system is essential to peace and safety in any government, and especially in one clothed only with specific powers for national purposes, and erected in the midst of numerous state governments retaining the exclusive control of their local concerns." (1 Kent's Com. 231.)

It seems strange, therefore, that under the Confederation the whole of these powers, so far as they were exercised at all by the Central Government, were concentrated in the Congress. Not only was this body the Executive and the Legislative power, but the ninth of the "Articles" provides that "The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences between two or more States;" and these were the only cases of which the Federal Government took cognizance at all.

This defect, however, must have made itself very apparent to all during the continuance of the Confederation, for both of the original

drafts for a Constitution introduced into the Convention in 1787, concurred in containing provisions establishing the division of power; the first, that of Mr. Randolph, by its ninth Resolution, "That a National Judiciary be established;" and the second, that of Mr. Pinckney, having as its first article, "The government shall consist of supreme Legislative, Executive, and Judicial powers;" and on the very next day after very brief debate, the latter section was adopted by a vote of six States to one (Connecticut), one other (New York) being divided. Thus we find that the first act of the Convention was to establish this fundamental and most important change in the form of the Government; and no stronger argument could be adduced in support of the "three branch" system than the almost unanimous vote in its favor by a body composed of men of very dissimilar views and representing differing interests, who had the experience of a ten years' trial of the opposite system.

That its introduction into the constitution gave additional power and stability to the Government is too universally conceded to require any argument.

2.—*The Uni-Executive.*

The most obvious difference between the form of government under the "Articles" and that of the Constitution is in the presence in the latter of one chief executive officer—the *President of the United States*. The "Articles" established no Executive branch, or rather the functions of the Executive were given to the Congress as a part of its privileges and duties. The necessity in a well ordered government of a division of the executive and legislative powers has been already considered, and the only point now to be noticed is the Unity of the Executive under the Constitution.

Perhaps no subject occupied the attention of the Convention of greater difficulty than this, or regarding which there was more diversity of opinion. In the first place, the people of the States were prejudiced against the idea of a single executive officer, from its association in their minds with the monarchical systems of the Old World. Having, through sufferings and hardships unparalleled, succeeded in ridding themselves of tyranny, they naturally were exceedingly jealous of their dearly-bought liberties, and determined to take no

step which might at any time put them in jeopardy ; and such a supposed danger many imagined in the placing of one man at the head of the Government as its executive officer.

A careful consideration of the subject will show, and history proves to us, that such is not the case ; that their apprehensions were groundless. There is no more danger to the people from a single executive than from an executive committee or directory of any larger number. And on the other hand the advantages of the system are manifest at a glance.

Unity in the Executive is not only productive of energy, promptitude, vigor, and power, but is essentially necessary in other points. "There are two objects in forming systems of government," said Hamilton in the New York Convention, "*safety* for the people and *energy* in the administration." And Napoleon, alluding to executive duties in a letter to the French Directory, May 14, 1796, wrote, "One bad general is even better than two good ones," adding, "war is like government, it is a matter of tact."

An undivided duty brings with it undivided responsibility, and the people can much more

easily watch the acts of *one man*, than where each of a number screens himself behind his compeers. Besides, a division of power introduces discord, delay, and uncertainty, as well as opportunity for corruption and intrigue; and is frequently the cause of personal rivalries extremely detrimental to the public welfare. Or the Executives may contend among themselves until one gains the sole control and authority, as in the case of the Triumvirates at Rome, where first Julius and then Augustus Cæsar were striking instances of the dangerous tendency of the plural system.

The first plan brought before the Convention of 1787 (that of Edmund Randolph) left the number of the Executive blank. The second (Pinckney's) named a single President. The subject being under discussion for the first time on June 1, was very warmly debated; Dr. Franklin objected to the question being decided at that time, as it was one of such vital importance. Mr. Randolph strenuously opposed unity in the Executive magistracy. He regarded it, he said, as "the foetus of monarchy." He could not see why the three great requisites of the Executive department—vigor,



despatch, and responsibility—could not be found in three men as well as in one.

Mr. Patterson's plan, introduced on June 15, as embodying the views of the New Jersey delegation, proposed a plural executive; but in this respect, as in most others, did not receive a great amount of favor. The plan of Mr. Madison, soon after introduced, embodied the Uni-Executive principle by providing for the vesting of the supreme executive authority "in a Governor to be elected to serve during good behavior." Considerable discussion on these various propositions ensued, but the vast weight of argument in favor of a single executive seems finally to have convinced even those originally most opposed to such an officer, as the test vote on the subject, taken July 17, was *unanimous*.

Nevertheless the people of the States felt the greatest repugnance to entrusting the executive authority to the hands of a single official. This is seen in the provisions of the various State Constitutions of the time.

In Pennsylvania, Delaware, and New Hampshire, there was no Governor, the executive power being exercised by a Council or Committee, the President of which held the nomi-

nal title of President of the State, but had in reality no more authority than the other members of the executive body.. In but one State (Massachusetts) did the Governor possess even a qualified veto power ; and in but two others (New York and Maryland) was he entrusted with any appointing authority. The first Constitution of South Carolina had invested the Governor with an absolute veto, but on a new Constitution being adopted the democratic sentiment was so strong that not even a qualified negative was accorded to the executive. In every State, with one exception, the power of the Governor was greatly curtailed by an Executive Council, whose assent and concurrence were required in almost all matters of importance.

In the State Conventions called to consider the new Constitution, the Uni-Executive feature was vigorously opposed. Not to multiply instances we will take as an example the Virginia Convention, where Patrick Henry, who in fact opposed the new Constitution almost *in toto*, expressed his fears in the following manner. "Among other deformities this constitution squints towards monarchy. \* \* \* Your President

— | may easily become a king.” “If your American chief be a man of ambition and abilities how easy it is for him to render himself absolute. The army is in his hands, and if he be a man of address it will be attached to him, and it will be the subject of long meditation with him to seize the first auspicious moment to accomplish his design.” “I would rather infinitely have a King, Lords and Commons, than a government so replete with such insupportable evils. If we make a King we may prescribe the rules by which he shall rule his people, and interpose such checks as shall prevent him from infringing them; but the President, in the field, at the head of his army, can prescribe the terms on which he shall reign master,” etc., etc.

Nothing gives to the National Government more of its strength, power, energy, and durability than this feature—the Uni-Executive.

Whenever the reverse principle has been tried, it has been a failure in these respects. The French Directory is a signal example of this; and whenever the dual plan has been apparently successful it will be found, on examination, that the duality was only nominal

and not real; as in the case of the Government of Rome by two Consuls—the fact being that they alternately ruled when both were in the City, and that after the arms of the ambitious Republic had subdued the nations around, one Consul was always absent in the Provinces. So, too, in Siam, nominally governed by two Kings; the one is really King, and the other hereditary Prime Minister. In this country, those who have desired and endeavored to weaken the National Government have been those who have favored the dual executive system, knowing that nothing could further their object to a greater extent than this change. Thus it was a favorite idea with Mr. Calhoun, to which he gave frequent expression, to have one President from the North and one from the South, each possessing the veto power.

The same plan was proposed during the excitement preceding the Compromise measures of 1850; and as recently as 1861, on the eve of the rebellion, and while the Peace Conference was in session, Senator R. M. T. Hunter of Virginia, afterwards the Rebel Secretary of State, proposed this measure as a last resort to avert impending war.


### 3.—*Bi-cameral Legislature.*

Under the Confederation the whole legislative authority was concentrated in a single body ; and at the time of the formation of the Constitution, the theory that a single house is the most desirable form for the legislative branch of the Government was not without active and warm supporters.

In almost all the Colonies, the "bi-cameral" or two-house system had been introduced, following the plan of the two houses of Parliament in the mother country. Indeed, this system may be said to be the almost universal accompaniment of the Anglo-Saxon race wherever they may go. Dr. Lieber mentions having referred the eminent De Tocqueville, who inquired of him the mode in which the Anglican race form their governments, to the case of Oregon Territory, the settlers in which, at a time when Congress had made no provision for them, met for the purpose of establishing some government for themselves, and at once adopted the principle of two houses. And he adds: "It is as natural to us as the Common Law." Perhaps a more striking instance of this is the case of New Hampshire,

the people of which, being deserted by their Governor, inquired of Congress what course they should pursue. Congress having advised them to establish such a Government as would "best produce the happiness of the people," the Provincial Convention assumed the character of a House of Representatives, and proceeded to elect a council of twelve members, providing that in future both Houses should be elected by the people. Thus, in this first assumption of government by any people in America, the bi-cameral system was adopted, and the example was soon followed by South Carolina.

However, we find that during the Revolutionary contest the supporters of the uni-cameral system in the new States became quite numerous, and in the case of Pennsylvania succeeded in carrying their views into effect. Their opinion was supported on the ground of the greater efficiency and promptitude of action in a one-house legislature, an argument more powerful in time of war than under other circumstances. Dr. Franklin was an enthusiastic supporter of this principle at that time, and was sustained in his view by the opinion of some of the most eminent states-




men of Continental Europe, where this system, previous to the Napoleonic wars, was almost universal.

Before the Constitution was formed, however, the experience of the Confederation and a more general acquaintance with correct political principles, led to a general acquiescence in the bi-cameral system, and even Pennsylvania finally returned to it.

The advantages of the system are so generally recognised at this time as scarcely to require argumentation to be employed in its support. In the first place, a single legislative body naturally in time becomes tyrannical, and as has been well said, no tyranny is so unscrupulous and despotic as the tyranny of a numerous body. The despotism of a single man is in some degree controlled by his single responsibility, as in Russia, where the Government has been aptly called "an absolute monarchy tempered by assassination." But in an *assembly*, the responsibility being apparently divided, there is not even this check, and all experience has shown that the most odious tyrannies have been of this kind. The single instance of the Government of France in the early days of the Revolution is sufficiently

illustrative. Again, the two houses operate as a reciprocal check upon hasty and excessive legislation, so apt to be indulged in by an uncontrolled legislature, particularly in times of popular excitement; securing deliberation and a careful review of all measures by independent minds in the other branch of the legislature. They present, also, a barrier to the strong propensity so natural in public bodies to concentrate all power, patronage, and influence in their own hands, and singularly enough this fact is admitted by Lamartine in an address before the French Constituent Assembly in 1848, when, in speaking in support of the uni-cameral government, he mentioned as a defect in the two-house system that "it would be too difficult to make it pass over from a simple legislature to an assembly with dictatorial power," which, although a disadvantage in his opinion, certainly to Americans appears one of its most important and valuable features. Again, a single body is much more easy to manipulate or influence by patronage, or by direct bribery, in support of men or measures the most dangerous to the public safety. But the intrigues of ambitious demagogues are comparatively harmless when two





houses share the power and exercise reciprocal checks on each other. And in the last place, by having the elements of which each body is composed differ in the manner of election, in their qualifications and in the length of the term of office, as well as in the size and locality of the districts represented, we introduce a conservative element most important in the frame of government. Indeed, so apparent are these advantages that they are now acknowledged and acted upon in almost every country where the government has any pretension to being representative.

In the great upheaval of governments succeeding the French Revolution, we find the bi-cameral form followed very generally in the new systems introduced in the various parts of Europe, and with increasing uniformity, as time and experience showed the advantages of this form. Thus the third Constitution of Republican France, adopted September 23, 1795, after a full and certainly very disastrous trial of the one-chamber principle under the Constitutions of 1791 and 1793, established the bi-cameral form. "No people," said M. Boissy d'Anglais in 1795, at the time of the change referred to, "can testify to the world

with more truth and sincerity than Frenchmen can do, the dangers inherent in a single legislative assembly, and the point to which factions may mislead an assembly without reins or counterpoise."

In Norway the same system (bi-cameral) was introduced by the Constitution of Nov. 14, 1814.

In Poland by the Emperor Alexander, when assuming the title of King of that country, in the Constitution of Nov. 27, 1815.

In the Netherlands by the Constitution of August 24, 1815 (the Senate being chosen by the King, the Deputies by the people).

In the Ionian Republic by the Constitution of 1818 (Senate chosen from lower legislative body).

In Nassau, Sept. 2, 1814; in Baden, Aug. 22, 1818; in Hanover in 1818; in Wirtemberg, Sept. 25, 1819; in Hesse Darmstadt, May 18, 1820; in the Kingdoms of Greece and Belgium at the time of their establishment as independent powers; in Brazil, and in all the South and Central American Republics, under each of their ever-changing forms.

More recently still in the new Kingdom of Italy; and within the past two years (1865)

Sweden, the last country of importance adhering to the system of *more* than two houses—where through many changes of Government the established form of four chambers, representing respectively the Nobles, the Clergy, the Citizens and the Crown Peasants, had been religiously preserved—has succumbed before the weight of argument adduced by reason and experience, and adopted the bi-cameral system.

At the present time, of the thirty-three limited Monarchies of Europe, nineteen have legislatures consisting of two houses, the remainder being principally unimportant German States, including the four Saxe Duchies, two Mecklenburgs, two Lippes and two Schwartzenburgs,\* the aggregate area of the whole of which is less than one-fifth that of Michigan or Florida.

In the Constitutional Convention of 1787, we find that this subject provoked considerable discussion, although those in favor of the bi-cameral system were always in the majority.

\* The absorption of a large number of the minor States into Prussia and the North German Confederation during the past year, has of course greatly diminished the number of Governments not arranged on the bi-cameral system.

Mr. Randolph's plan of a Constitution, which was the first proposed, contained as its third resolution: "*Resolved*, That the National Legislature ought to consist of two branches."

Mr. Pinckney's plan, laid before the Convention on the same day (May 29), contained provisions very similar in these particulars; and on the 31st this section was adopted in Committee of the Whole by the vote of every State except Pennsylvania; which opposed it, says Mr. Madison, "probably from complaisance to Dr. Franklin, who was understood to be partial to a single house." Later in the session, however, when the plan was reported from the Committee, this provision was the cause of much debate. Mr. Patterson, in his plan introduced June 15, left the Congress as it was under the Confederation; the whole plan in fact being an Amendment to the Articles instead of a new Constitution. This was soon followed by the sketch read by Mr. Madison as embodying his own views, in which the bi-cameral system was included. A lengthy and most interesting debate followed, in which Mr. Madison and others of the most prominent members participated, in the course

of which we find the argument used by Mr. Sherman, that while two branches might be "necessary in a State Legislature, he could see no necessity in a Confederacy of States; the examples are all of a single council," used in opposition to the strong point made by the friends of a double-chamber system by adducing the examples of all the States except Pennsylvania. The friends of the measure were, however, much too strong to be overthrown, and upon the vote being taken it stood—yeas, 7—nays, 3—(New York, New Jersey, and Delaware). Divided, 1—(Maryland).

#### *4.—Increased Nationality.*

##### *A. General Provisions.*

The evident intent of the framers of the Constitution was to establish a Nation! This great fundamental idea can be found running through all the debates of the Constitutional Convention, and prominent in the speeches and writings of the great men of that day. The experiment of a Confederation had been fairly tried and had signally failed.

Says the letter to Congress with which the Convention accompanied the draft of the Con-

stitution, "In all our deliberations we kept steadily in our view that which appeared to us the greatest interest of every true American—the consolidation of our Union, in which is involved our property, felicity, safety—perhaps our national existence."

In carrying into effect this design of forming a nation, with a strong central Government, capable of making itself obeyed at home and respected abroad, the Convention found it necessary, instead of amending the "Articles," as had been the intention when the delegates were appointed, to commence *de novo*, in order to form a Constitution embodying this great idea in its whole plan and scope.

The first use of the word "National" in the Convention, and perhaps the first embodiment of the idea in distinct language, was in the Resolutions introduced by Gouverneur Morris, on May 30, as a substitute for the Resolutions of Mr. Randolph, which latter were that "the articles ought to be corrected and enlarged." Mr. Morris' third Resolution was as follows—brief, but all-important to our future prosperity :

"*Resolved*, That a *National* Government ought to be established, consisting of a

*Supreme* Legislative, Executive, and Judiciary."

The whole subject was embraced in these few words !

The proposition at that time was a bold one. Several members, including General Pinckney and Elbridge Gerry, expressed doubts as to the authority of the Convention to discuss a system founded on such different principles from those of the Confederation. Mr. Morris explained the difference "between a *Federal* and a *National Supreme* Government, the former being a mere compact resting on the good faith of the parties, the latter having a complete and compulsive operation." "He contended that in all communities there must be one supreme power and one only ;" and after some debate the vote was taken and the Convention decided on a *National* and not a *Federal* Government, by the strong vote of six to one, the negative vote being by Connecticut, and that of New York being divided. Thus early in the proceedings of the Convention was this point, the most important which was to occupy their attention, decided. Thus early did they determine that America should be a *Nation* and not a *League*. For in these few

words was embraced the whole fundamental principle of the Government. The Government was to be *National*, and it was to be *Supreme*. At that moment really the great work of the Convention was accomplished ; what remained was comparatively but matter of detail.

The essential difference between the "Articles" and the Constitution on the subject of nationality is seen in almost every material provision. Even in the Preamble it is most apparent.

The former are called "Articles of Confederation" between the States ; the latter the "Constitution of the United States." The former term implied the union of certain distinct sovereignties for certain objects ; the latter, the establishment of One Nation. The distinction is certainly a striking one, and at the same time it truly sets forth the fundamental differences between the two forms of government established. The Preamble of the "Articles" begins, "Whereas the Delegates of the United States, in Congress assembled ;" the Constitution commences, "We, the People of the United States ;" thus in its first words bearing evidence of its national



and popular character. Not, "We, the States," nor "We, the Congress," but "We, the *People*." No three words so gloriously appropriate to the future of the nation, as the standard-bearer of Free Institutions and Popular Government, could have been selected! None which, in so brief a space, could express the great principle of the right of the People to rule themselves. "We, *the People*, do ordain."


We find these words severely animadverted upon at the time by those opposed to the nationalizing of the Government. Thus, as late as the time of the Convention of North Carolina, when ten States had already ratified the Constitution, Mr. Taylor exclaimed against the expression in these words: "This is a consolidation of all the States. Had it been 'We, the States,' there would have been a federal intention in it; but, sir, it is clear that a consolidation is intended." Undoubtedly Mr. Taylor's reasoning was correct. His only error consisted in not recognizing that the nationalizing features of the Constitution were in truth its greatest value.

Mr. Madison, in a letter to Edmund Randolph in 1787, goes even further than the Convention subsequently did in the point of

having the Constitution a popular and national instrument. He says: "To give the new system its proper energy, it will be desirable to have it ratified by the authority of the *People*, and not merely by that of the *Legislatures*."

The first draft of the Constitution as reported to the Convention by the Committee to which was referred the arrangement and wording of the Articles, reads as follows: "We, the People of the States of New Hampshire, Massachusetts," &c., &c.; but this was fortunately superseded by the national expression we have referred to.

Passing to the next clause, the object of the Constitution is stated. And for what was this great Fundamental Law established? "To form a more perfect union." "To secure the blessings of union to ourselves and our posterity." Thus, as the primary aim and object of the Constitution, is placed in its preamble the *establishment of the Union*—a nation one and indivisible—a Government powerful and enduring. True, the "Articles" spoke of "Perpetual Union between the States," but they were Articles of "Confederation;" and the necessity of organizing anew



in less than ten years "to form a more perfect Union," showed how little calculated was any weak Confederacy to withstand the shocks which must assail every established Government.

How marked is the difference between the words of the Constitution just referred to, and the Second of the Articles, which commences, "Each State retains its sovereignty, freedom and independence!" It is true that none of them had ever exercised any independent sovereignty, even the Declaration of Independence not declaring any individual Colony to be an independent State, but simply—speaking collectively—that "these *United Colonies* are, and of right ought to be, free and independent *States*." In the very instructions to the delegates in Congress authorizing them to vote for separation from Great Britain, the same fact is apparent. Thus the New Jersey credentials read, "We empower you to join in declaring the *United Colonies* independent of Great Britain;" and the authority given to the Maryland deputies, was to "concur with the other *United Colonies*, or a majority of them, in declaring the *United Colonies* free and independent States." They had never

acted separately as sovereign. They had no separate armies; no separate ambassadors; no separate Colony or State had declared itself independent; they had always been *United States*; the Declaration was made jointly by all; the war jointly by all; the treaties with foreign nations jointly by all. But still the idea of separate and individual sovereignty was firmly adhered to until the Constitution, and by none so tenaciously as by the smaller States, who thereby obtained an equal vote with their larger neighbors, *sovereigns* of course being equal; and to this idea may be traced directly and distinctly the evils and weakness of the Government under the Confederation, compelled to deal with thirteen distinct sovereignties, and of course without coercive power to execute the laws within the limits of either.

It is, therefore, a very noticeable and pregnant fact that the word "Sovereign" is never once used in the Constitution; and could our fathers have seen the great dangers and calamities which the use of this word would bring upon the country, they would undoubtedly have desired to banish it from the language as well as from the great instrument which

in less than ten years "to form a more perfect Union," showed how little calculated was any weak Confederacy to withstand the shocks which must assail every established Government.

How marked is the difference between the words of the Constitution just referred to, and the Second of the Articles, which commences, "Each State retains its sovereignty, freedom and independence!" It is true that none of them had ever exercised any independent sovereignty, even the Declaration of Independence not declaring any individual Colony to be an independent State, but simply—speaking collectively—that "these *United Colonies* are, and of right ought to be, free and independent *States*." In the very instructions to the delegates in Congress authorizing them to vote for separation from Great Britain, the same fact is apparent. Thus the New Jersey credentials read, "We empower you to join in declaring the *United Colonies* independent of Great Britain;" and the authority given to the Maryland deputies, was to "concur with the other *United Colonies*, or a majority of them, in declaring the *United Colonies* free and independent States." They had never

money, regulate the value thereof," "to borrow money on the credit of the United States," "to provide and maintain a navy," "to raise and support armies," "to declare war, grant letters-of-marque and reprisal," &c. The "Articles" provided, on the other hand, that "The United States in Congress assembled, shall *never* engage in any war, nor grant letters-of-marque and reprisal in time of peace, nor coin money, nor regulate the value thereof, nor borrow money on the credit of the United States, nor agree on the number of vessels of war to be built or purchased, or the number of land and sea forces to be raised," &c., *unless nine States assent to the same.*

By the Constitution, the President and Senate have power to make treaties. By the "Articles" the concurrence of nine States was necessary for this purpose also.

In fact, to the Government under the Constitution is given every attribute of sovereignty; the eighth Section of Article I., which contains a statement of the powers of Congress, is most inclusive on this subject.

The only judiciary power granted to the Federal Government under the Confederation, was in the single case of a difference arising

they framed. General Washington gives emphatic expression to his ideas on this subject, where in a letter to John Jay, March 10, 1787, he writes of "a thirst for power, and the bantling—I had like to have said the monster, sovereignty—which has taken such fast hold of the States individually."

The "Articles" uniformly call the Government of the Confederation "The United States in Congress assembled;" in the Constitution, on the other hand, the legislature is always called "The Congress," or "The Congress of the United States." The two titles might be paraphrased as "The Sovereign States represented by Delegates in Convention," and "The National Congress." This meaning of the words "The United States in Congress assembled" is shown to be a correct one from the sentence, "Nor shall the United States in Congress assembled, or any of them, grant any title of Nobility;" the words here evidently signifying the States themselves, as there represented, as the "*any*" could not refer to separate members of Congress, and must refer to the separate States.

Again, the Constitution empowers the Congress absolutely and unconditionally to "coin

money, regulate the value thereof," "to borrow money on the credit of the United States," "to provide and maintain a navy," "to raise and support armies," "to declare war, grant letters-of-marque and reprisal," &c. The "Articles" provided, on the other hand, that "The United States in Congress assembled, shall *never* engage in any war, nor grant letters-of-marque and reprisal in time of peace, nor coin money, nor regulate the value thereof, nor borrow money on the credit of the United States, nor agree on the number of vessels of war to be built or purchased, or the number of land and sea forces to be raised," &c., *unless nine States assent to the same.*

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The only judiciary power granted to the Federal Government under the Confederation, was in the single case of a difference arising



of which we find the argument used by Mr. Sherman, that while two branches might be "necessary in a State Legislature, he could see no necessity in a Confederacy of States; the examples are all of a single council," used in opposition to the strong point made by the friends of a double-chamber system by adducing the examples of all the States except Pennsylvania. The friends of the measure were, however, much too strong to be overthrown, and upon the vote being taken it stood—yeas, 7—nays, 3—(New York, New Jersey, and Delaware). Divided, 1—(Maryland).

#### 4.—*Increased Nationality.*

##### *A. General Provisions.*

61 The evident intent of the framers of the Constitution was to establish a Nation! This great fundamental idea can be found running through all the debates of the Constitutional Convention, and prominent in the speeches and writings of the great men of that day. The experiment of a Confederation had been fairly tried and had signally failed.

Says the letter to Congress with which the Convention accompanied the draft of the Con-

stitution, "In all our deliberations we kept steadily in our view that which appeared to us the greatest interest of every true American—the consolidation of our Union, in which is involved our property, felicity, safety—perhaps our national existence."

In carrying into effect this design of forming a nation, with a strong central Government, capable of making itself obeyed at home and respected abroad, the Convention found it necessary, instead of amending the "Articles," as had been the intention when the delegates were appointed, to commence *de novo*, in order to form a Constitution embodying this great idea in its whole plan and scope.

The first use of the word "National" in the Convention, and perhaps the first embodiment of the idea in distinct language, was in the Resolutions introduced by Gouverneur Morris, on May 30, as a substitute for the Resolutions of Mr. Randolph, which latter were that "the articles ought to be corrected and enlarged." Mr. Morris' third Resolution was as follows—brief, but all-important to our future prosperity :

"*Resolved*, That a *National* Government ought to be established, consisting of a

time postponed, but it is worthy of remark that the term of office was on that day fixed at seven years.

The idea of a direct election by the people did not meet with any special favor. The Convention evidently had not confidence in the patriotism and intelligence of the people as a whole, for, said Elbridge Gerry when the subject was again under discussion: "The popular mode of electing the Chief Magistrate would certainly be the worst of all. If he should do his duty he will certainly be turned out for it, like Gov. Bowdoin in Massachusetts, and President Sullivan in New Hampshire."

On the succeeding day Mr. Wilson introduced a resolution providing for the election of President in a manner very similar to the present plan, by Electors chosen in the Congressional Districts, but it was voted down immediately without debate—ayes two, nays eight; and the arrangement of electing by Congress was adopted by the same vote, the States in minority being Pennsylvania and Maryland.

So near were we to having our Chief Magistrate elected by Congress, and the election consequently attended by all the intrigue and

words was embraced the whole fundamental principle of the Government. The Government was to be *National*, and it was to be *Supreme*. At that moment really the great work of the Convention was accomplished ; what remained was comparatively but matter of detail.

The essential difference between the "Articles" and the Constitution on the subject of nationality is seen in almost every material provision. Even in the Preamble it is most apparent.

The former are called "Articles of Confederation" between the States ; the latter the "Constitution of the United States." The former term implied the union of certain distinct sovereignties for certain objects ; the latter, the establishment of One Nation. The distinction is certainly a striking one, and at the same time it truly sets forth the fundamental differences between the two forms of government established. The Preamble of the "Articles" begins, "Whereas the Delegates of the United States, in Congress assembled ;" the Constitution commences, "We, the People of the United States ;" thus in its first words bearing evidence of its national

and popular character. Not, "We, the States," nor "We, the Congress," but "We, the *People*." No three words so gloriously appropriate to the future of the nation, as the standard-bearer of Free Institutions and Popular Government, could have been selected! None which, in so brief a space, could express the great principle of the right of the People to rule themselves. "We, *the People*, do ordain."

We find these words severely animadverted upon at the time by those opposed to the nationalizing of the Government. Thus, as late as the time of the Convention of North Carolina, when ten States had already ratified the Constitution, Mr. Taylor exclaimed against the expression in these words: "This is a consolidation of all the States. Had it been 'We, the States,' there would have been a federal intention in it; but, sir, it is clear that a consolidation is intended." Undoubtedly Mr. Taylor's reasoning was correct. His only error consisted in not recognizing that the nationalizing features of the Constitution were in truth its greatest value.

Mr. Madison, in a letter to Edmund Randolph in 1787, goes even further than the Convention subsequently did in the point of

having the Constitution a popular and national instrument. He says: "To give the new system its proper energy, it will be desirable to have it ratified by the authority of the *People*, and not merely by that of the *Legislatures*."

The first draft of the Constitution as reported to the Convention by the Committee to which was referred the arrangement and wording of the Articles, reads as follows: "We, the People of the States of New Hampshire, Massachusetts," &c., &c.; but this was fortunately superseded by the national expression we have referred to.

Passing to the next clause, the object of the Constitution is stated. And for what was this great Fundamental Law established? "To form a more perfect union." "To secure the blessings of union to ourselves and our posterity." Thus, as the primary aim and object of the Constitution, is placed in its preamble the *establishment of the Union*—a nation one and indivisible—a Government powerful and enduring. True, the "Articles" spoke of "Perpetual Union between the States," but they were Articles of "Confederation;" and the necessity of organizing anew

of the Federal and State Conventions than any other subject. Thus, it came up on the very first day in the Federal Convention, when on reading the credentials from the State of Delaware, it appeared that the Deputies from that State "were prohibited from changing the article in the Confederation, establishing an equality of votes among the States," and the first of the standing rules adopted for the government of the Convention provided that they should vote *by States*.

The determination of the majority to nationalize the legislative branch of the Government, however, soon became apparent. Both Randolph's and Pinckney's plans contained provisions for apportioning the members of Congress with reference to the population of the States; and when the question first came up for debate, on May 30, in reply to a threat that the Delegates from Delaware might feel compelled to withdraw in case the Convention insisted on this point, Gouverneur Morris replied, "that the change proposed was so fundamental an article in the National Government that it *could not be dispensed with*;" and Mr. Madison said, "that whatever reason might have existed for the equality of suffrage when

the Union was a *Federal* one among sovereign States, it *must cease* when a *National* Government should be put into the place."

Still, the project was most vehemently opposed, and debates on it were frequent and spirited. Mr. Brearly "was astonished—he was alarmed—when the proposition for destroying the equality of votes was proposed." Mr. Patterson considered the proposition for a proportional representation as "striking at the existence of the lesser States. He would rather submit to a monarch—to a despot—than to such a fate." But so strong was the national feeling, that when a vote was reached, not only the lower House, but the Senate also, was organized on the basis of comparative population—the broadest national ground ever assumed. "The General Government," said Mr. Wilson, "is not meant for the States, but for the individuals composing them. The individuals, therefore, not the States, ought to be represented in it." But it being found absolutely necessary to conciliate the smaller States by some compromise measure, it was finally arranged that the States should be equally represented in the Senate.


It is a singular fact, and one worthy of



attention, that the final consent of the Southern States to this representative system in the House of Representatives was based on the impression that the population of the South would increase much more rapidly than that of the North, and that consequently they would soon obtain a decided ascendancy in the Government.

This argument may be found repeated dozens of times in the course of the debates in the State Conventions called to ratify the Constitution; and affords at this time a subject of much interest to the student of political science, viewing it as we now can by the light of an experience which has shown the event to be so entirely the reverse of the anticipation.

Without dwelling longer on this subject, I will only add that not only was the House nationalized by being made to represent population instead of States, but that the members are not even elected by the States at large, but in separate districts, and that in voting, each votes as his sense of propriety dictates, without any reference to his colleagues. So entirely is the idea of State sovereignty, and indeed of everything connected with mere State divisions, lost sight of in the constitu-



tion of this great branch of the National Government !


*D.—Nationality of the Senate.*

I have previously remarked somewhat on the organization of the Senate while considering that of the House of Representatives ; that it was first decided to have it constituted on the basis of population, but on the imminent peril of the disruption of the Convention by the withdrawal of the Delegates from the small States, it was agreed that each State should be equally represented in it. But even when passed under these circumstances of necessity, so strong was the national sentiment that the act was attended with more excitement and bitterness of feeling than characterized any other perhaps during the whole progress of the debates. A discussion ensued on the desirability of adjourning *sine die*, and giving up all hopes of organizing a satisfactory Government. On the subject being brought up again shortly after (July 23), the Nationalists—if we may so designate them—represented by Gouverneur Morris and Rufus King, proposed that the Senators should vote *per capita* instead of by States, thus destroying the State

character of that body and nationalizing it. Naturally enough it was opposed by the supporters of the State sovereignty idea, Mr. Martin opposing it "as departing from the idea of the States being represented in the second Branch;" but it was finally adopted by the decisive vote of nine States to one. Thus was incorporated into the Constitution this great national feature which, by a single phrase, robbed the Senate of an exclusively State character. For while it is true that this State character is nominally preserved, yet it is entirely lost by the independent voting of each individual member; and perhaps no discussions in the Senate Chamber have ever been more animated—more bitter, indeed—than those between opposing Senators from the same State, each assuming to be the correct exponent of the political opinions of the people they represented. This was perhaps more noticeable years ago, before parties were divided so much by geographical lines as at present; but of late years none can forget the examples of Douglas and Trumbull of Illinois, Gwin and Broderick of California, and Chase and Pugh of Ohio, and the writer has a vivid recollection of witnessing such a contest be-

tween our present President (Johnson), then the newly elected representative of the "Democracy" of Tennessee in the Senate, and John Bell, at that time at the height of his fame as a leading "Whig" statesman, on the question of obeying instructions passed by the Tennessee Legislature. Indeed, an examination of the composition of the Senate will demonstrate that there are always a number of States whose influence is thus neutralized—the effect of our rapidly shifting politics; in 1853 no less than ten being thus represented by Senators mutually opposed, and in 1855 *eleven* being similarly situated.

Thus, by this provision of the Constitution, this last stronghold of State feeling, State pride, State sovereignty, is rendered really a National body, the members of which represent *their own* political opinions, or those of the party with which they are connected, far more than the exact opinions of the people of their States, notwithstanding the deference which some few have shown to the doctrine of Instructions. Here the subject of Instructions, and the propriety of obedience to them, naturally presents itself, but a proper regard for brevity forbids its consideration.



Thus we have traced the nationalizing spirit of the Constitution in both Branches of Congress as well as in the case of the Executive.

5.—*Power of the Government to enforce its Laws.*

/ We have seen that the lack of *power* in the central Government was perhaps the most lamentable defect in the time of the Confederation. Almost everything necessary to the carrying on of the Government was left to the States, and the Federal Government itself had no power to compel them to perform the duties thus devolved upon them. The remedy was to be found either by transferring these duties and powers *directly* to the National Government, or by giving that Government the means of *compelling* the States to perform them.


The organization of the United States Judiciary, and more especially the authority delegated to the Supreme Court by the Constitution, went a long way towards securing the desired end in the second manner; and in the powers given the General Government, of acting directly on the citizen, without the intervention of the States, as in the collection

of taxes, we have striking instances of the first.

The authority given to the Supreme Court is of the highest importance; including, as it does, that of deciding as to the Constitutionality of State Laws. Under the Confederation there was no power similar to this in the Federal Government. Any State could legislate in direct opposition to the provisions of the Articles of Confederation, and there was no authority in the Government to review and restrain such acts.

Nor is this power of the National Government one merely *nominal*, for although, happily, the necessity for its exercise is not frequent, yet whenever the occasion has arisen, it has been impartially and fearlessly exerted. Thus during the first forty years after the adoption of the Constitution, no less than twenty-six State laws were declared unconstitutional by the Supreme Court, and fourteen judgments of State Courts were annulled.

The importance of this power, however, is not to be judged from the number of unconstitutional measures which it has prevented from going into operation; for its great influence is exerted morally in *preventing* uncon-



stitutional legislation from taking place at all. The knowledge that there is such a tribunal, with power to review and decide, is a restraint, the value of which it would be difficult to overrate; but we can well imagine what rampant and vindictive legislation would without it have taken place in many of the States at various critical points in our history, when political excitement ran high and the judgment even of legislators was darkened by passion and prejudice; as for example, at the time of the Virginia and Kentucky "Resolutions of '98;" of the Hartford Convention in 1814; of the Missouri excitement in 1819-20; of Nullification in 1831-2; of the excitement preceding the Compromise measures of 1850; and more recently in the days of the Fugitive Slave Law difficulties, the Kansas troubles, the Election of 1860, and the preparations for the Rebellion.

The Judiciary may be called the great conservative element in the Government; and that which enables it to become so important an instrument for good, is the *power* which under the Constitution it possesses of *enforcing* its decrees throughout the whole extent of the Union—in short, of being *in fact* that

which it is in name—the *Supreme* Court of the United States.

Again, under the Constitution, the Government holds both the Purse and the Sword; and any authority which possesses these is the real *power* in the land.

A Government, whatever be its form or name, which holds these two, can control absolutely the country in which it is; the great check which the representatives exercise upon the absolutism of the sovereign in most limited monarchies, being from their power over the purse in refusing to grant supplies.

An example of this fact was recently seen in the case of Prussia, where the Ministry, having assumed the right of raising money by taxation without the consent of the representatives, was able by its consequent independence to set them at defiance.

In a case like that of our own country, however, it is evident that these powers should exist in the National Government, and in that alone. "It is an objection in some gentlemen's minds," said Rufus King, "that Congress should possess the powers of the Purse and the Sword. But, sir, I would ask whether any Government can exist or give security to



the people, which is not possessed of this power." Under the Confederation, the former of these powers was controlled entirely by the States; and the latter required the sanction of nine States for its exercise. The disastrous result we have already seen.

Let us glance again at the subject of Taxation, in this connection.

✓ We have seen that the credit of the Confederation grew worse and worse; that the paper currency of the Government depreciated until it became utterly valueless. And why? Simply because the States did not pay the quotas assigned to them, and there was no *power* to compel them so to do. Naturally, the backwardness or entire neglect of one State furnished an excuse for similar neglect by the others, and so the evil continually increased. At length, in 1781 (February 3), Congress passed an act laying a Federal duty of 5 per cent. on all imports; but this was one of those acts which under the Confederation required the *unanimous approval* of the separate States to render it valid and effectual. In this instance, it required nearly two years for the subject to be brought before all the Legislatures, and late in 1782, when every State but two had

given their consent, the hopes of Congress were suddenly dashed by the refusal of the Legislature of Rhode Island—the smallest of all the States—to concur in the measure. Thus the veto of the most insignificant member of the Confederation could prevent the adoption of any measure of this nature, however important; and clog, if not entirely stop, the operations of the Government.

But in this matter of taxation the Constitution gives to Congress ample powers. “The Congress shall have power to lay *and collect* Taxes, Duties, Imposts, and Excises”—powers which it exercises to-day in all four branches enumerated.

So thoroughly was the power which this section gave to the new National Government appreciated at the time, that it encountered the stoutest opposition, particularly in Massachusetts, a State always jealous of her prerogatives in this particular. Thus General Thompson said in the Massachusetts Convention in 1787: “Mr. President, I totally abhor this paragraph;” and Mr. Singletary thought “no more power could be given to a despot than to give up the purse-strings of the people.

If we turn to the power of the Sword, we



have seen so plainly within a few years how the strong arm of the Government could be employed in raising and wielding military force, where milder measures were not effectual to compel obedience by individual States to the National authority, that no further illustrations need be added.

A number of points have already been alluded to while considering the National character of the Government, which might with equal propriety have been introduced under this head of Power; but enough has probably been said on the subject to demonstrate how immeasurably superior on this point of the Power of the National Government to enforce obedience to its laws, is the "Constitution" to the "Articles of Confederation."

WE are told that while the last members of the Convention were signing the Constitution, Dr. Franklin, looking towards the President's chair, at the back of which a rising sun happened to be painted, remarked : " I have often and often, in the course of the Session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President, without being able to tell whether it was rising or setting ; but now, at length, I have the happiness to know that it is a rising, and not a setting sun."

It is our privilege to see that sun in the height of its meridian splendor. May we not hope and trust that it will be the " Sun which never sets ?"







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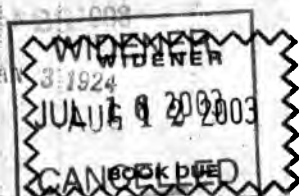
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